

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-2001

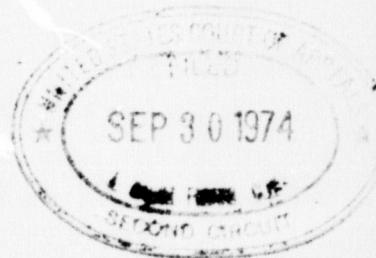
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United States Court of Appeals

BPLS

For The Second Circuit

L. JOHN JACOBI and ROBERT GAMBERA, individually, on behalf of the members of the AMERICAN ASSOCIATION OF SECURITIES REPRESENTATIVES, and on behalf of all other securities representatives similarly situated.



Plaintiffs-Appellants.

vs.

BACHE & CO., INC.; WALSTON & CO., INC; THOMSON & McKINNON AUCHINCLOSS, INC. (formerly THOMSON & McKINNON, INC.); HORNBLOWER-WEEKS, HEMPHILL, NOYES; LOEB, RHOADES & COMPANY; TUCKER, ANTHONY & R. L. DAY; HARRIS, UPHAM & O., INC; DOMINICK INTL. CORP.; HALLE & STIEGLITZ, INC.; GOODBODY & CO., INC; BEAR, STEARNS & CO.; LEHMAN BROS.; KIDDER PEABODY & CO., INC.; R. W. PRESSPRICH & CO., INC.; DEAN WITTER & CO., INC.; W. E. HUTTON; REYNOLDS & CO.; PAINE, WEBBER, JACKSON & CURTIS; SCHEINMAN, HOCKSTIN & TROTTA, INC.; PRESSMAN FROLICH & FROST, INC.; NEWBURGER, LOEB & CO.; RAUSCHER, PIERCE SECURITIES CORP.; OPPENHEIMER & CO.; STEINER ROUSE & CO., INC.; L. F. ROTHSCHILD & CO.; SPENCER TRASK & CO.; SMITH BARNEY & CO., INC.; and THE NEW YORK STOCK EXCHANGE, INC..

Defendants-Respondents.

JOINT APPENDIX

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Gambera

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2 "Mr. Sovel: Excluding the surcharge.

3 "Mr. McAllister: The thing that bothers me is that
4 it says, 'However, they will receive credit to their agency
5 gross on the commission portion. What is the commission
6 portion referred to?

7 "Mr. Sovel: The basic commission, not the surcharge.

8 "Let me say to you, Mr. McAllister, Walston &
9 Company is a defendant here; perhaps they can explain what
10 they meant. We have a witness here, and you have asked
11 him to produce a document, which he has produced, and he
12 told you that they didn't receive any commission from the
13 surcharge.14 "Q Referring to Exhibit 4 again, Mr. Gambera, I
15 notice underlined 'including all commissions under \$12.'
16 Can you explain what that means?17 "A They had come in with a decision that commissions
18 would not be paid under \$12, and then they reversed that
19 when the surcharge came in.20 "Q Was there any time while you were employed by
21 Walston that they did not give you some credit for
22 commissions under \$12?

23 "A For the period before the surcharge went in, yes.

24 "Q In other words, after the surcharge went in, if
25 you handled transactions for which the commission was under

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2 \$12, you now received a commission on that.

3 "A Yes, I think it ran from \$2 to \$12.

4 "I am not sure of this, but if the commission was
5 under \$1 you didn't get any commission, but now it ran from
6 2 to 12 that they reinstated it on."

7 Now at page 38, your Honor, line 10:

8 "Q How did you first learn that a surcharge was
9 being put into effect?

10 "A Well, it was generally discussed that it was going
11 to come in to bail out the back office, because the
12 companies were in critical financial condition. So I knew
13 from reading the journal--

14 "Q The Wall Street Journal?

15 "A Right. --and magazines, I knew the companies were
16 going to petition for a surcharge, to work out something
17 until they could get a new schedule.

18 "Q You mean the brokers were going to ask--

19 "A Ask the SEC for some sort of surcharge to carry
20 them through this period.

21 "Q Do you know what the SEC's reaction was to that
22 petition, if there was any?

23 "A I know it was approved.

24 "Q By the SEC?

25 "A Yes."

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Gambera

2 Then at page 42, line 9:

3 "Q Mr. Gambera, during your employment at Walston &
4 Company, can you tell us generally the nature of the odd-
5 lot transactions you handled? Were they institutional
6 block transactions?7 "A Well, not institutional block, but generally 200,
8 300, 400 share trades.9 "Q And were you affected at all in your own compensa-
10 tion by the change with regard to all commissions under \$12?11 "A Yes; I would be paid for all commissions under
12 \$12, whereas before I wouldn't be.13 "Q And did this result in a financial benefit to
14 you, to your knowledge?

15 "A Oh, yes, you got the 30 percent on that, so, yes."

16 Then at page 52 at line 15. This picks up where
17 Mro Sovel stopped reading.18 "Q Well, did you make any writings or written
19 computations which you relied upon when you made that
20 estimate?

21 "A Oh, I am sure I added it up.

22 "Q Did you do that in writing?

23 "A On scratch paper.

24 "Q Do you still have that--

25 "A Oh, I am sure I threw it away. I just wanted to

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2 have an idea of what it would be. I didn't think it would
3 be necessary to keep the papers.

4 "Q Have you ever computed what the additional 30
5 percent on commissions under \$12 added to your compensation?

6 "A No, I haven't."

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17 THE COURT: The SEC, as I understand it, would be
18 presumed to have knowledge of the Exchange's constitution
19 and all its amendments up to any point in time you would
20 want; is that correct?
21 MR. SOVEL: I would say they were on file with
22 them. Whether they were acting in accordance --
23 THE COURT: Presumed to have knowledge?
24 MR. SOVEL: Perhaps. Let me just stop there.
25 THE COURT: You don't accept it. You say "perhaps."

1 eoh

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2 The SEC also had before it, as it was proposed
3 and then commented upon, this particular rule. Do you
4 dispute that the rule was reviewed and commented upon by
5 the SEC?

6 MR. SOVEL: I would have to say, your Honor, that
7 there was a proposal sent down to them.

8 THE COURT: Proposed rule.

9 MR. SOVEL: Proposed rule, and that the SEC acted
10 on the basis of the letters and all the information that
11 they had before them. We don't have at this point any
12 evidence as to what they really had in mind on that. We
13 have certain letters, which your Honor is familiar with.

9 THE COURT: Now we have gotten the permits of the
10 antitrust case which is, I think, where your case is
11 probably going to fall. Would you point out to me in the
12 record where you have proved a diminution of competition.

13 From what I can see, these firms were competing
14 the same as before. Shearson Hammill comes in here and says
15 "We found a way to pay our registered representatives more,
16 ergo, competition."

17 You are talking here about twenty-nine firms out
18 of five hundred. This is where your case will probably
19 fall and you might as well defend it here and now if you
20 would.

21 What is your proof of diminution of competition?

22 MR. SOVEL: If your Honor please, I do not have to
23 prove diminution of competition to prove a violation of the
24 antitrust laws, and that is where you have a per se viola-
25 tion you do not have to show that effect. That is the whole

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2 sense of a per se violation; that it is presumed to follow
3 from that type of an arrangement and there is no necessity
4 for separate proof of it.

5 In the case of Plymouth --

6 THE COURT: In other words, you would distinguish
7 Brown Shoe, for example?

8 MR. SOVEL: Yes. I would tell your Honor --

9 THE COURT: Explain to me how. I find it of grave
10 concern to me as far as your case is concerned.

11 MR. SOVEL: Because the subsequent decisions,
12 your Honor, decisions like Tapko, decisions --

13 THE COURT: Like Checker Motor? I think Checker
14 Motor is devastating to your case where Judge Mansfield
15 observed, as I recall, that you had to establish a diminu-
16 tion of competition. I think that is the bottom line of his
17 decision and, basically, it would seem to me that you are
18 going to have to explain that one as well.

19 MR. SOVEL: First of all, your Honor, I would point
20 out that Judge Mansfield held in this case in his earlier
21 decision that if employees got together to reduce wages,
22 that would be a per se violation of the antitrust laws.

23 THE COURT: I know what he held. I read his
24 decision.

25 MR. SOVEL: This is that case and in the many cases

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2 that dealt with horizontal combinations, you don't have to
3 prove the diminution of competition because the vice lies
4 in the agreement itself without regard to the effect on
5 competition because ultimately the agreement will have its
6 effect on competition, and there are a number of cases that
7 so hold, your Honor.

8 THE COURT: I don't see how you have demonstrated
9 in your case that the competition among brokerage firms
10 relative to payment of funds, commission, if you will, to
11 registered representatives was diminished or that there was
12 a loss of competitive pricing freedom here.

13 I thought the Shearson Hammill point was well taken
14 on that subject. They found a way to give the registered
15 representatives more, which apparently was legal.

16 MR. SOVEL: Well, I can come to the Shearson Hammill
17 one, your Honor --

18 THE COURT: No, I think that affects your whole
19 case, you see.

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DEFENDANTS' OFFERS OF ADMISSIONS AND EXHIBITS

* * *

23 || MR. JACKSON: If your Honor pleases, on defendant's
24 case, I would like to offer in evidence two documents, copies
25 of which I have previously furnished to Mr. Sovel, they are

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2 really all of a parcel. This is a series of the Securities
3 and Exchange Commission, dated August 31, 1970, an official
4 Government publication, which announces various action by
5 the SEC. It refers to the matter of the NYSE surcharge and
6 annexes or refers to, I should say, a memorandum relating
7 to the surcharge which the Commission considered in
8 deciding to extend it, and that memorandum of the SEC is
9 also annexed as a part of this exhibit.

10 THE COURT: Any objection?

11 MR. SOVEL: If your Honor please, I think that is
12 Exhibit G --

13 THE COURT: It would be G for identification, yes.

14 MR. SOVEL: If your Honor please, I have no objec-
15 tion to the admissability of the exhibit. I think it
16 should be noted that the first part of the release is a
17 summary of various actions of the SEC and we are only
18 interested in the one paragraph relating to the service
19 charge, and the remaining portion of that, which I have not
20 bothered to read, is not to consider to be in evidence.

21 THE COURT: I assume it is being offered with the
22 Court to review the material which is headed, "NYSE charge?"

23 MR. JACKSON: That is correct, your Honor. That
24 is all I am offering from the release.

25 MR. SOVEL: Secondly, your Honor, there is a

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2 memorandu attached and it is my understanding, and I think
3 it should be clear, that this is a memorandum prepared by
4 the SEC staff in the regular course of its business. On
5 that basis, I will agree to its admissability.

6 MR. JACKSON: Thank you, Mr. Sovel.

7 THE COURT: Is that correct? I do note, although
8 I have only looked at it, that the memorandum does not
9 indicate a "to" or "from." It does indicate a subject and
10 it does not appear on the last page to be signed in any way.
11 So can I take that, Mr. Jackson, as an SEC prepared
12 memorandum?

13 MR. JACKSON: Yes, it is, your Honor.

14 THE COURT: I will take it on that basis.

xx 15 (Defendant's Exhibit G received in evidence.)

16 THE COURT: G is received with the limitations
17 previously set forth in the record, no objection.

18 MR. JACKSON: If your Honor pleases, I would like
19 to draw your attention to two statements in this memorandum
20 of the SEC.

21 On appearing on page 5 of the memorandum, because
22 I think it is directly responsive to your Honor's statement
23 just before we caucused, that you were interested in hearing
24 about the exclusive SEC jurisdiction over this matter.

25 At page 5, the SEC memorandum states that in its

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2 release of July 2, 1970, announcing the reconvening of the
3 rate hearings for the purpose of receiving evidence on the
4 necessity of extending the surcharge, the Commission stated
5 and now I am quoting:

6 "That it would not take action to terminate the
7 surcharge pending its determination of the necessity of its
8 extension, but considered its non-action upon the same terms
9 and conditions imposed on initiation of the surcharge."

10 Then it goes on and I am quoting:

11 "In addition, the Commission expressly conditioned
12 the continuation of the surcharge upon the Exchange's
13 agreement that it would not require the Commission to proceed
14 under Section 19(b) if the Commission should determine th
15 the surcharge should be terminated."

16 I submit that that evidence is the Commission's
17 position that it did have in 19(b) authority over the sur-
18 charge.

19 Secondly, without taking the time to read into the
20 record the statements in this memorandum, I would like to
21 draw the Court's attention to the fact that at pages 11 and
22 12, the results of the monitoring of the impact of the
23 surcharge are set forth, including those relating to sales-
24 men's compensation.

25 THE COURT: Yes, I see someone has helpfully marked

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2 the exhibit.

3 MR. JACKSON: Sorry, your Honor, I am not offering
4 the markings.

5 THE COURT: No, it always helps, though, to know
6 what you are interested in demonstrating to me and I recog-
7 nize the exhibit as offered exclusive of the markings, but
8 it would appear from this exhibit, which is in evidence,
9 that the SEC was aware from its monitoring that relative
10 to salesmen's compensation, all firms either made no change
11 in the manner of compensation, that is 430 firms, or they
12 renewed limitations on compensation placed into effect last
13 year.

14 That relates to thirty-one firms.

15 Passing the subject of correspondent charges is a
16 further indication on page 12 indicating that there has been
17 a restructuring of salesmen's compensation apparently due
18 to the profit squeeze experienced on Wall Street, and
19 apparently almost all of the firms reported no change in
20 salesmen's compensation policy, which would indicate to me
21 that they did not permit salesmen to share in the additional
22 revenue derived directly from the surcharge.

23 If I am mistaken, I would appreciate counsel's
24 calling my mistake to my attention at this point.

25 MR. SOVEL: Are you talking to Mr. Jackson?

2 MR. JACKSON: I think your Honor has accurately
3 summarized those portions of the memorandum.

4 THE COURT: Mr. Sove, you wish to say something?

5 MR. SOVEL: If your Honor please, I hope it is not
6 out of order for me to, first of all, state that I do not
7 subscribe to Mr. Jackson's statements with respect to the
8 portions of page 5 as to what the SEC meant by the 19(b)
9 reference there.

10 I am wondering if it would be out of order for me
11 to call to your Honor's attention another portion of the
12 memo at this time or whether I, perhaps, should wait.

13 THE COURT: No, I would think as soon as Mr. Jack-
14 son has finished calling particular portions of the memo to
15 my attention, you could proceed much the same as I had
16 counsel call to my attention portions of depositions after
17 you had read your share.

18 Is there anything you wanted to point out, Mr.
19 Jackson?

20 MR. JACKSON: Nothing further, your Honor.

21 THE COURT: Mr. Sovel.

22 MR. SOVEL: If your Honor please, I would
23 specifically direct your Honor's attention to page 3, foot-
24 note 3 and the text that precedes it up into the body which
25 shows the studies made by the SEC staff prior to the initial

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2 adoption of the service charge in which the footnote says
3 or the text says that they made certain untested assumptions.

4 Then the footnote says, "For example, it was
5 arbitrarily assumed that one-third of the additional
6 revenues may be passed on to the registered representatives
7 and not be available to the firm."

8 That is the SEC's view before they permitted the
9 adoption of the service charge.

10 THE COURT: This is the SEC's view as stated in
11 this memorandum of August 20, 1970 and you say that they
12 are relating back to their thinking prior to the surcharge
13 or service charge becoming effective?

14 MR. SOVEL: Your Honor, the memorandum sets forth
15 the history of the service charge prior to the hearings
16 that were held in June and July of 1970, and the section,
17 pages 1, 2 and 3, in fact up to page 4, deal with the back-
18 ground pre-April 2, 1970 where the Commission is describing
19 what it did prior to the initial approval.

20 THE COURT: Let me cut you short. I think the
21 point that you are making to me and I accept for the moment
22 is that the SEC, prior to the surcharge going into effect
23 in April 1970, was of the view that a portion of the
24 service charge, specifically approximately one-third, could
25 be passed on to the registered representatives. "Could."

2 MR. SOVEL: I think it would be more accurate that
3 in testing the reasonableness of the amount that was being
4 asked, they assumed that it would be.

5 THE COURT: I recognize that. Now, we get to a
6 point after April where it appears to have come to their
7 attention that when you take the Constitutional provision,
8 plus the Exchange's interpretation, a portion of the sur-
9 charge was not being passed along to the registered
10 representatives because, in essence, the Exchange told its
11 member firms it couldn't be.

12 I will be interested to know if after that fact,
13 which apparently escaped the SEC in the first instance, if
14 after that fact it came to the SEC's attention they permitted
15 an extension of the surcharge for further periods of time.

16 I would suggest they probably did.

17 MR. SOVEL: Your Honor, I think the point that is
18 here raised is that when they made their calculations in
19 determining the reasonableness of the amount, they made
20 certain assumptions. This goes to a question of what the
21 conversations were and what may have been in their mind at
22 the time they initially approved the service charge.

23 Now, there is no evidence in this case that the
24 SEC was ever specifically directed to come to grips with
25 Article 15, Section 9 in its prohibition. There was a

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2 complaint that the member firms, because the Exchange was
3 not permitting them -- by the way, that is not even in the
4 record at this stage in the game either, your Honor -- that
5 the people were complaining about the New York Stock Exchange's
6 activity. There is no evidence that the SEC ever focused
7 on the point, concerned itself about it or thought it could
8 do anything about it.

9 THE COURT: I have your point.

10 MR. JACKSON: At this point, your Honor, I should
11 like to read as an admission from the affidavit of Mr.
12 Sovel, sworn to July 9, 1973, submitted in support of his
13 motion for partial summary judgment for the plaintiffs in
14 this action. I am commencing at paragraph 14 of that
15 affidavit, which appears at the bottom of page 8.

16 MR. SOVEL: Excuse me one minute, your Honor. I
17 would like to have a minute to look at it.

18 THE COURT: Of course.

19 (Pause)

20 MR. SOVEL: All right.

21 MR. JACKSON: Paragraph 14. "By telegram dated
22 May 19, 1970, an organization known as Association of Invest-
23 ment Brokers requested the SEC to cause the New York Stock
24 Exchange to direct all member firms to share the interim
25 service charge on commissions with their registered

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2 representatives. By letter dated June 22, 1970, Homer H.
3 Budge, then the chairman of the SEC, responded to this
4 telegram stating inter alia: 'The Commission has not inter-
5 fered with the various compensation arrangements which
6 firms have with their salesmen. We believe that this is a
7 matter of determination by each firm with its registered
8 representative subject only to the qualification that they
9 act prudently to improve their operations and financial
10 condition where such action is warranted.'

11 "A copy of the entire letter from Chairman Budge
12 is annexed hereto, Exhibit 7."

13 Continuing, paragraph 15.

14 MR. SOVEL: Excuse me. If your Honor please, if
15 answer number 14 is to be offered, I request also that the
16 exhibit referred to be included as part of the offer.

17 MR. JACKSON: I was about to do that and I
18 certainly accept that.

19 THE COURT: I think that is quite reasonable.

20 MR. JACKSON: May it be deemed marked, your Honor,
21 and I will supply a copy for the Court's records.

22 THE COURT: If Mr. Sovel doesn't take exception to
23 what I am about to do, I could remove Exhibit 7 from your
24 affidavit and that is the letter.

25 MR. SOVEL: I have no objection.

1 eorm 25

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2 THE COURT: If there is no objection, I will do
3 that now and we will put this letter of June 22, 1970 into
4 evidence. Is that agreeable?

5 MR. SOVEL: Yes.

6 That is H?

7 THE COURT: It is your Exhibit 7 and it will become
8 Defendant's Exhibit H in evidence. No objection.

xx 9 (Defendant's Exhibit H received in evidence.)

10 MR. JACKSON: If I may go on, your Honor --

11 MR. SOVEL: Are you going to offer 15?

12 MR. JACKSON: Yes.

13 MR. SOVEL: If your Honor please, paragraph 15 of
14 the affidavit was an effort to shorthand state the contents
15 of testimony at the hearing before the SEC.

16 I have the actual transcripts of that hearing and
17 I think it would be more appropriate just to answer the
18 transcript rather than some paraphrasing of what they
19 contain.

20 THE COURT: Since to a certain extent paraphrasing
21 is argument, I suppose the transcript would be the best
22 evidence. Why don't you show it to Mr. Jackson and see what
23 his disposition is.

24 I gather that transcript includes pages 5554 and
25 5555 of the transcript of the hearing; is that right, Mr.

2 Sovel?

3 MR. SOVEL: Your Honor, unless somebody has removed
4 them since I last looked at it, they do.5 MR. JACKSON: If your Honor pleases, at this time,
6 the transcripts are fairly lengthy, I have not had a
7 chance to read them, I am not sure that everything in them
8 is pertinent to what is purportedly summarized in this
9 paragraph, and at this point I propose to read the paragraph
10 as Mr. Sovel's admission, which I think is binding, and
11 perhaps after the interval I can respond to the question of
12 whether the transcripts themselves in full apparently should
13 be admissible with respect to this admission.

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T4B 2 THE COURT: Let me suggest this: in turn to
3 rebuttal Mr. Sovel offers the transcripts, I will take them
4 and in my judgment they will supersede whatever you read
5 now. You are free to read if you like.

6 MR. JACKSON: Paragraph 15 --

7 THE COURT: Mr. Sovel, I assume you have no
8 objection to that procedure?

9 MR. SOVEL: I have no objection to that procedure,
10 your Honor. As long as we understand that an effort
11 to paraphrase when we have no personal knowledge has a very
12 limited effect in this kind of litigation.

13 THE COURT: It is a matter of the weight I will
14 give to it and I will very carefully make sure that your
15 paraphrase is supported by what the transcript says because
16 this is in the nature of hearsay.

17 You may proceed, Mr. Jackson.

18 MR. JACKSON: Paragraph 15. "In July of 1970,
19 following the SEC's non-objection to the indefinite ex-
20 tension of the service charge, the SEC reconvened hearings,
21 which it had been holding on the commission rate structure
22 of the securities industry. The July hearing dealt
23 specifically with the question of whether the service
24 charge should continue to be extended. In the course of
25 these hearings Mr. Merrill J. Chapman, president of the

1 eoh 2

2 Association of Investment Brokers testified. In the course
3 of his testimony he started to raise objection to the
4 SEC's failure to provide that registered representatives
5 be paid commission on the service charge. At this point
6 he was advised by Mr. Nicholas K. Wolfson, an assistant
7 director, Division of Trading and Markets of the SEC,
8 that the SEC had taken no position on whether the service
9 charge could or could not be shared with registered
10 representatives. This discussion, which appears at pages
11 5554 and 5555 of the transcript of the hearings is annexed
12 hereto, Exhibit 8. It may be noted that Mr. Wolfson
13 specifically referred to the letter previously sent to
14 the agency. I think that should read "Association for
15 Investment Brokers from the chairman of the commission
16 under date of June 23, 1970."

17 THE COURT: I would note for the record, unless
18 there is another letter, that the letter which is in
19 evidence as Defendants' Exhibit H is June 22, 1970. But,
20 Mr. Sovel, I assume you know of no other letter which
21 was sent to the Association of Investment Brokers, that
22 is any letter other than Exhibit H?

23 MR. SOVEL: That's correct, your Honor. I suspect
24 that at the time it was a typographical error that I did
25 not pick up.

1 | eoh 3

MR. JACKSON: Now, going on if I may, your Honor.

THE COURT: Please do.

4 MR. JACKSON: Paragraph 16. "Mr. Sam Cordova,
5 president of the American Association of Securities
6 Representatives, also testified at the hearings before
7 the SEC in July of 1970. In the course of his testimony
8 he also was advised by Mr. Wolfson that the SEC had taken
9 no position on whether registered representatives could
10 be paid commission based on the service charge. This
11 portion of the testimony appears at pages 5819 and 5819
12 of the transcript of the hearing, copies of which are annexed
13 hereto, Exhibit 9."

14 Now, that is all I propose to read at this time
15 from Mr. Sovel's affidavit.

I do offer with these admissions Exhibits 8
and 9 to the affidavit, which are the portions of the
testimony which Mr. Sovel's affidavit purports to summarize
and I think that they are properly admitted since he
attempts to summarize them, but I do not believe that
any other portions of that testimony is admissible at
this time.

THE COURT: Well, under a doctrine of completeness
I would suggest that if Mr. Sovel desires to introduce
other portions of the testimony, I would be disposed to

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2 MR. JACKSON: I draw your Honor's attention,
3 if I may, to section 2 providing that the Board of
4 Directors of the Exchange may impose a charge on members,
5 member firms, and member corporations measured by their
6 respective net commissions on transactions effected on
7 the floor of the Exchange and with certain exceptions,
8 which are not relevant, it limits the amount of that
9 charge to 1 per cent of the difference between the gross
10 commission charged by the member on account of such trans-
11 action and the commission is payable by such member
12 to other members on account of such transaction.

13 THE COURT: What is your proposed offer, sir?

14 MR. JACKSON: I find that this document apparently
15 has already been marked.

16 THE COURT: What is it if I may inquire?

17 MR. JACKSON: I believe it is Defendants' Exhibit A.

18 THE COURT: That is the educational circular
19 number 285?

20 MR. JACKSON: Yes, your Honor, April 2, 1970.

21 THE COURT: Educational circular 285 is in
22 evidence.

23 MR. JACKSON: Right. I would like to draw your
24 Honor's attention to page 3 of this exhibit --

25 THE COURT: Yes.

1 eo14

2 MR. JACKSON: The top of the page, the first
3 paragraph reading as follows:

4 "The member organization will have to maintain
5 separate records of commissions and service charges. The
6 service charge will not be used in arriving at the New
7 York Stock Exchange 1 per cent charge on net commissions."

8 THE COURT: So I can have just a little background
9 at the moment, although I know it is testimony and you
10 are not a witness, just what is it or what was the New York
11 Stock Exchange 1 per cent charge on net commissions?

12 MR. JACKSON: If your Honor pleases, there are
13 two main sources of revenue that the exchange has.

14 One is revenue from listing fees for securitie
15 listted on the exchange and the other, except for dues
16 which are really nominal, the other are charges paid by
17 the member organizations and that is a 1 per cent charge
18 based on the net commission received by the member firm
19 on the transaction on the exchange.

20 These documents show that 1 per cent was charged
21 only on the commission and not on the service charge.

22 THE COURT: So the stock exchange, vis-a-vis
23 the member firms, is in somewhat the same position as
24 the plaintiff registered representative?

25 MR. JACKSON: It was not sharing. That is exactly

440

1 eoh15

2 right.

3 THE COURT: It did not share in the service
4 charge.

5 MR. JACKSON: That's right. The member firms
6 got it all.

* * *

EXHIBIT 1

**LETTER DATED MARCH 16, 1970 FROM NYSE TO SEC
NEW YORK STOCK EXCHANGE**

JKR 248A

ELEVEN WALL STREET

NEW YORK, N.Y. 10005

ROBERT W. HAACK
PRESIDENT

March 16, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Chairman:

My letter to you dated March 13th promised to submit to you this week our proposal for immediate interim financial relief. As I mentioned in that letter, many member firms are suffering large losses month after month not only on their brokerage business but on their overall operations. In the month of February, the financial plight of many member firms appears to have intensified. Because the Commission's review of the NERA report will inevitably require time, while the need for financial relief is urgent, we submit the following interim proposal:

The NYSE Interim Proposal.

We recommend the imposition of a charge of \$15 on all orders up to and including 1,000 shares. However, we recommend a ceiling on this charge of 50% of any increase above the present schedule. In other words, under no circumstances will charges on any order be allowed to increase more than 50% above the level established for that order in 1958.

We believe that this proposal is a minimum necessary to restore some measure of financial health to the securities commission business. It will not be sufficient to make small orders fully remunerative, but it will allow some of the financial relief necessary for the survival of member firm organizations during the period immediately ahead.

FEB 16
2/18/70 (3/19/70)
2/18/70

The Honorable Hamer H. Budge

249A
PAGE NO. 2

March 16, 1970

We have estimated the impact of the proposal on orders of various size, with the following result:

<u>Order Size</u>	<u>Industry Increase</u> (millions of dollars)
1 - 99	\$101.2
100 - 199	198.6
200 - 299	71.6
300 - 399	25.4
400 - 499	12.1
500 - 599	20.8
600 - 999	9.1
1000 - 1099	10.1
	<u>\$448.9</u>

We believe that this proposal has several important advantages to recommend it:

1. The order charges would flow primarily to those firms most in need of relief.
2. The proposal keeps the increases paid on small orders to a bare minimum, both by limiting the aggregate dollars requested and by accepting the 50% ceiling. The NERA schedule would increase commission rates on orders up to 399 shares by a total of \$660 million if applied by all NYSE member firms to agency trades in all markets. Our interim charge would yield increases only two-thirds as great. According to our calculations, the interim increase would come to less than \$450 million.
3. The public is protected by the fact that the net amount of the interim relief is not substantially different from the aggregate ultimate relief proposed by NERA on a net basis. The interim increase would amount to 18.0% compared with the 17.6% in the NERA recommendations for all markets.
4. The proposed rates would tend to move brokerage charges more closely in line with the costs of servicing these orders. Thus, we believe that this recommendation will begin to bring rates in the direction of a more balanced and more equitable structure.
5. The 50% ceiling on any rate increase mitigates the impact of the higher charges needed by member firms on small orders, especially odd-lot trades. With a heavy toll of inflation since 1958, when rates were last changed, there

The Honorable Hamer H. Budge

March 16, 1970

should be little justifiable opposition to a realignment of charges which limit the increase to a 50% maximum. The imposition of the 50% ceiling makes it necessary to spread some of the needed increases among other size orders, which accounts for the fact that we are now recommending an interim increase in rates on all orders up to and including a thousand shares.

6. This proposal would allow member firms to meet the costs of their retail orders but it would not make these profitable. Because the proposed interim increase would provide only partial relief, and because it would still not yield a positive return on capital for firms in the retail end of the business, we would hope that this interim adjustment would be replaced by a more permanent and more sufficient commission rate schedule before long.

7. Another feature which recommends the interim proposal is its simplicity. It should be easy for the public to understand an order charge such as we are proposing. We believe this proposal also has merit from an operations standpoint in that firms at present must account separately for orders in excess of 1,000 shares.

In view of the need for immediate interim relief, we are intending to adopt the proposed order charge, without a membership vote, pursuant to the provisions of Article XV, Section 9, of the Exchange Constitution. Our plan is to suggest the adoption of the rule to the Exchange's Board of Governors at its Policy Meeting on March 19th.

I thought you would want to know that this proposal carries the unanimous recommendation of the Costs and Revenues Committee. Though a wide segment of our industry has been acquainted with this proposal, there has been no opposition in any quarter.

Sincerely,

EXHIBIT 6 - LETTER DATED MARCH 10, 1970 FROM
NYSE TO SEC

251A

NEW YORK STOCK EXCHANGE

11 WALL STREET
NEW YORK, N.Y. 10003

RETURN TO
PRESIDENT'S READING COPY FILE

March 19, 1970

Mr. Irving M. Pollack, Director
Division of Trading and Markets
Securities & Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Mr. Pollack:

Pursuant to Rule 17a-8 under the Securities Exchange Act of 1934, we are submitting herewith three copies of a new Rule 383 which we propose to present to our Board of Governors for final approval at the earliest possible date. In an effort to expedite this matter, we would very much appreciate receiving your comments before the end of the three week notification period required under Rule 17a-8:

The new Rule 383 would require that member organizations make a charge of not less than the lesser of \$15 or 50% of the commission applicable to the order. For the purposes of this rule, an order would be defined to include a combination of one or more round lots and an odd lot. Thus, an order for 210 shares at \$40 would carry a single charge of \$15 rather than two charges, one of \$15 on the 200 shares and one of \$8 on the 10 shares.

The new Rule 383 imposes a service charge under Article XV, Section 9 of the Constitution.

P.S. 4/1
S. 4/1
18/72 (3 P.M.)

EXHIBIT 6

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Pollack

March 19, 1970

ending copies of this letter to each of the because it will implement a proposal made before on Tuesday, March 17. On that occasion and at have urged that the condition of our member today makes an early enactment of this proposal sary. I hardly need add that the urgency of this with each day that passes.

New Rule 303

Sincerely,

(Signed) ROBERT W. HAACK

able Hugh F. Owens
able A. Sydney Herlong, Jr.
able Richard B. Smith
able James J. Needham

In add
accordance wit
the Constituti
and collect u
of any order f
a non-member o
a service chm
\$15 or 50% of
this Rule, on
purchases or
odd lots or b
day, pursuant

EXHIBIT 39

266A

PAGE NO. 2

NEW YORK STOCK EXCHANGE

EXHIBIT 6

253A

dition to the commission computed in
with the provisions of ~~paragraph~~ 2(a)(1) of
on, each member organization shall charge
upon the execution on the Floor of the Exchange
for the purchase or sale for the account of
or on allied member of 1,000 shares or less
be equal to not less than the lesser of
such commission. For the purposes of
order shall be deemed to include all
sales for one account of round lots or
both of a single security, on the same
to a single order.

EXHIBIT 39

267A

PAGE NO. 3

EXHIBIT 8 - EXCERPT FROM MINUTES OF NYSE BOARD
OF GOVERNORS' MEETING OF MARCH 19, 1970

Mr. Haack reported on behalf of the Special Committee on Member Firm Costs and Revenues and presented the Committee's recommendation that the Board approve in principle, for discussion with the SEC and resubmission at a future meeting of the Board, the following new Rule 383:

11/11/70 In addition to the commission computed in accordance with the provisions of paragraph 2(a)(1) of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of \$15 or 50% of such commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order..

On motion duly made, seconded and carried, the Board approved the proposed new Rule.

11/11/70
8 3d and
2/15/72

3/15/68
9 2/27/72
2 pg's, 1 ps

SPECIAL
MEMBERSHIP
BULLETIN

EXHIBIT 9 - NYSE MEMBERSHIP BULLETIN DATED
MARCH 19, 1970

NEW YORK STOCK EXCHANGE
ELEVEN WALL STREET
NEW YORK, N.Y. 10005

ROBERT W. HAACK
PRESIDENT

TO: Members and Allied Members

March 19, 1970

SUBJECT: Interim Service Charge

The Board of Governors today approved in principle an interim measure to relieve the cost pressures on the securities industry of handling commission business, particularly for smaller orders.

The plan provides for instituting a service charge equal to not less than the lesser of \$15 or 50 per cent of the required minimum commission. A copy of the proposed rule and a table showing examples of the effect on typical orders are enclosed.

Although firms should be aware that since this is a minimum service charge, the Exchange Constitution does not permit the charge to be shared in the form of compensation to member firm registered representatives, we would remind firms that they may continue to follow their individual policies in sharing the minimum commission with their sales personnel.

The charge would be imposed by means of a rule of the Stock Exchange which now goes to the Securities and Exchange Commission for their comments. Allowing for the normal three-week waiting period for SEC comments, if the Commission imposes no objection, the new charge could be given final approval by our Board on April 12 and take effect shortly thereafter. However, we have asked the SEC to expedite their review in order that we might have their comments in less than three weeks.

It is evident that this interim charge is not a broad revision of the commission structure, such as outlined by our consultants, National Economic Research Associates, in the proposal filed with the SEC February 13. However, the SEC staff has indicated that it may be many months before it can complete its review of the NERA proposals for a basic restructuring of commission rates. Meanwhile, the industry urgently requires immediate interim relief. The \$15 charge, with its 50 per cent limitation, would accomplish this objective by increasing gross commission income of member organizations by an estimated 18 per cent (if applied to gross revenues for the first half of 1969). This is approximately the same size as the increase for all markets as recommended in the NERA proposal.

Chairman Lasker, Vice Chairman DeNunzio and I have told the Commission that we believe this charge is the minimum necessary to restore some measure of financial health to the securities commission business. While it will not be sufficient to make small orders fully remunerative, it will allow some of the financial relief necessary for member firm organizations during the period immediately ahead.

We believe that this proposal has several important advantages to recommend it:

- (1) The order charges would flow primarily to those firms most in need of relief.
- (2) The plan keeps the increases paid on small orders to a bare minimum, both by limiting the aggregate dollars requested and by accepting the 50 per cent ceiling. The NERA schedule would increase commission rates on orders up to 399 shares by a total of \$660 million if applied by all NYSE member firms to agency trades in all markets. Our interim charge would yield increases only two-thirds as great, less than \$450 million.
- (3) The public is protected by the fact that the net amount of the interim relief is not substantially different from the aggregate ultimate relief proposed by NERA on a net basis.
- (4) The interim charge would tend to move overall brokerage charges more closely in line with the costs of servicing these orders. Thus we believe that this step will begin to bring rates in the direction of a more balanced and more equitable structure.
- (5) The 50 per cent ceiling on any rate increase mitigates the impact of the higher charges needed by member firms on small orders, especially odd-lot trades. With a heavy toll of inflation since 1958, when rates were last changed, there should be little justifiable opposition to a realignment of charges which limit the increase to a 50 per cent maximum. The imposition of the 50 per cent ceiling makes it necessary to spread some of the needed increases among other size orders, which accounts for the fact that we are now recommending an interim increase in rates on all orders up to and including 1,000 shares.
- (6) This proposal would allow member firms to meet the costs of their retail orders but it would not necessarily make these profitable. Because the proposed interim charge would provide only partial relief, and because it would still not assure a positive return on capital for firms in the retail end of the business, we would hope that this interim adjustment would be replaced by a more permanent and more sufficient commission rate schedule before long.
- (7) Another feature which recommends the interim proposal is its simplicity. It should be easy for the public to understand an order charge such as we are proposing. We believe this proposal also has merit from an operations standpoint in that firms at present must account separately for orders in excess of 1,000 shares.

The interim charge was recommended unanimously by the Costs and Revenues Committee and voted unanimously by the Board of Governors. A wide segment of our industry has been acquainted with the plan at special meetings this week and there has been no opposition in any quarter.

I think you will agree that on an emergency basis this interim charge will help the industry to recover more of the costs of serving the small investor. This should provide substantial encouragement to firms to maintain and increase their service to the small investor whose continued participation is essential to the liquidity of the central market.

Proposed Rule 383 on Service Charge

In addition to the commission computed in accordance with
the provisions of paragraph 2(a)(1) of the Constitution, each
member organization shall charge and collect upon the execution
on the Floor of the Exchange of any order for the purchase or
sale for the account of a non-member or an allied member of 1,000
shares or less a service charge equal to not less than the lesser
of \$15 or 50% of such commission. For the purposes of this Rule,
an order shall be deemed to include all purchases or sales for
one account of round lots or odd lots or both of a single security,
on the same day, pursuant to a single order.

COMMISSIONS PLUS PROPOSED SERVICE CHARGE

<u>Shares Per Order</u>	<u>Price</u>					
	<u>\$10</u>	<u>\$20</u>	<u>\$40</u>	<u>\$50</u>	<u>\$75</u>	<u>\$100</u>
20	\$ 9.00	\$ 13.50	\$ 19.50	\$ 22.50	\$ 30.00	\$ 37.50
50	15.00	22.50	37.50	44.25	50.75	57.00
100	25.50	40.50	54.00	59.00	61.50	64.00
200	49.00	69.00	93.00	103.00	108.00	113.00
500	100.00	150.00	210.00	235.00	247.50	260.00
800	151.00	231.00	327.00	367.00	387.00	407.00
1,000	185.00	285.00	405.00	455.00	480.00	505.00
Over 1,000			No Change			

PER CENT CHANGE OVER PRESENT COMMISSIONS

<u>Shares Per Order</u>	<u>Price</u>					
	<u>\$10</u>	<u>\$20</u>	<u>\$40</u>	<u>\$50</u>	<u>\$75</u>	<u>\$100</u>
20	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
50	50.0	50.0	50.0	50.0	42.0	35.7
100	50.0	50.0	38.5	34.1	32.3	30.6
200	44.1	27.8	19.2	17.0	16.1	15.3
500	17.6	11.1	7.7	6.8	6.5	6.1
800	11.0	6.9	4.8	4.3	4.0	3.8
1,000	8.8	5.6	3.8	3.4	3.2	3.1
Over 1,000			No Change			



EXHIBIT 11 - LETTER DATED APRIL 2, 1970 FROM
SEC TO NYSE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

259A

OFFICE OF
THE CHAIRMAN

April 2, 1970

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

In your letter of March 19, 1970, you submitted for our review pursuant to Securities Exchange Act Rule 17a-3, a proposed rule which would require member organizations to impose a surcharge in the form of a service fee of \$15 or fifty percent of the applicable commission, whichever is the lesser, on orders of one thousand shares or less. The Exchange states that this service charge is needed to give interim financial relief to the industry while the Commission considers the proposals for longer term revisions in the existing rate structure submitted by the Exchange on February 13, 1970.

In support of the proposed interim increase, the Exchange represents that a large number of its member organizations which do a public business sustained substantial losses in 1969 and that the situation has further deteriorated during the first quarter of 1970. Data obtained by the Commission confirms the loss experience of these firms. Past losses and the prospect of a continued financial drain have influenced many member firms to impose limitations on their services to small investors. Based on studies prepared by National Economic Research Associates, Inc. as supplemented by more recent samplings of member organizations, the Exchange estimates that a surcharge of \$15 limited to fifty percent is required to provide adequate brokerage services for small investors and to retain needed capital within the securities business.

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Mr. Robert W. Haack
Page Two

April 2, 1970

The Commission is aware of the contribution of small investors to the depth and liquidity of our trading markets and considers it to be vital to the public interest that such investors continue to be able to participate directly in equity investment. We are also concerned with the financial problems of the industry and the losses sustained in the past year and during the first quarter of 1970. Accordingly, we will not object to the Exchange imposing an interim surcharge on rates to provide emergency financial relief while more fundamental alterations of the existing rate structure can be considered. However, we believe such action can be viewed as justifiable only if the service fee is to be imposed for a ninety-day period only and will expire thereafter. This self-liquidating factor would assure that the increase will, in fact, be an interim measure. Its continuance for more than one quarter will require a review of the economic conditions, including transaction volume levels, existing at that future time.

The Commission expressly predicates its non-objection to the interim increase in charges upon its expectation that the Exchange will take all steps necessary to assure that full brokerage services for small investors are restored and that transaction size and other limitations on such accounts imposed in the last year by the Exchange's membership will be removed. We also expect that the Exchange will undertake to make certain that the additional revenues produced by the interim surcharge will be received by the member firm obtaining the customer's order and will be prudently employed by its member organizations to improve their operations and financial position.

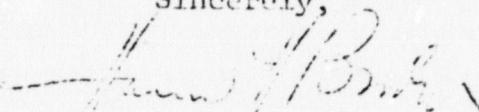
Lastly, we wish to emphasize that the Commission's action is based on our understanding that immediate financial relief is required. Our study of the existing commission rate structure will continue and we shall also monitor the operation of the interim fee arrangement. A full examination of the proposals for longer term revisions in the rate structure will be made as expeditiously as possible. In this

Mr. Robert W. Haack
Page Three

April 2, 1970

regard, the Commission expects that the Exchange will promptly comply with our request to make available all underlying data and materials required for such review.

Sincerely,


Hamer H. Budge

Chairman



EXHIBIT 27 - LETTER DATED JULY 1, 1970
FROM SEC TO NYSE
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

*Mr. Haack
DEC 26 1970
a Miller*

OFFICE OF
THE CHAIRMAN

JUL 1 1970

Mr. Robert W. Haack, President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

We understand that officials of the New York Stock Exchange have interpreted Rule 383 to prohibit a dual member from taking the surcharge into account for purposes of according regular-way reciprocity to a sole member of a regional exchange. In our letter to you of April 2, 1970 we stated: "We also expect that the Exchange will undertake to make certain that the additional revenues produced by the interim surcharge will be received by the member firm obtaining the customer's order and will be prudently employed by its member organizations to improve their operations and financial position." [Emphasis added.]

While this statement was in the context of the relations between different members of the New York Stock Exchange it is equally applicable to the relations between a member of your Exchange and a sole member of a regional exchange. When the matter of the surcharge was presented there was no suggestion that it was intended to give members of your Exchange any advantage over sole members of regional exchanges or to change the status quo respecting the ability of members of different exchanges to compete for and give service to customers. On the contrary, the entire basis for the charge was the assumed emergency need to cover the expenses of handling small orders, primarily in the area of originating and settling securities transactions of customers.

It may be that the position taken by your Exchange with respect to the matter of regular-way reciprocity rests on the technical distinction between a service charge and an increase in commission rates. Whatever the importance of this distinction for the purposes of your Exchange expediting the procedures for obtaining this interim emergency financial relief, it can have no relevance to the problem of fair treatment as between members of your Exchange and sole members of a regional exchange.

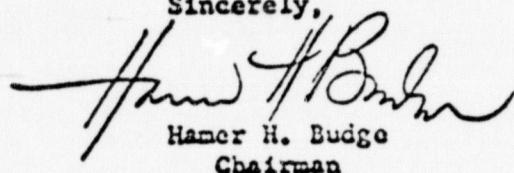
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Mr. Robert W. Haack

Page 2

Accordingly, we would appreciate your confirming to the Commission that your member firms have been advised that, notwithstanding any prior contrary interpretation of Rule 383, regular-way reciprocal practices involving members of regional exchanges who obtain customers' orders may take the service charge into account.

Sincerely,


Hamer H. Budge
Chairman

264A

EXHIBIT 28 - LETTER DATED JULY 7, 1970
FROM SEC TO NYSE

JUL 7 1970

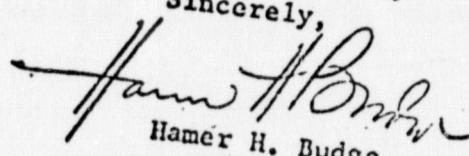
Mr. Robert W. Haack, President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

Enclosed is a copy of Exchange Act Release No. 8923. This is to further advise that the Commission will not take action to prevent the extension of the service charge, which is the subject of Exchange Rule 383, provided that the service charge will be terminated if the Commission so determines. Officers of the Exchange today have telephonically advised the Commission staff that the October 3, 1970 expiration date is being deleted from Rule 383. The Commission objects to this amendment of that rule except on condition that the rule will expire at such time as the Commission may require. Your prompt confirmation that the Exchange will adhere to this condition will be appreciated.

The same terms and conditions applicable to the initial imposition of the service charge continue in effect. The Commission again wishes to emphasize the need for the Exchange to take whatever steps may be required to insure prudent application of the service charge by member organizations, as stated in my letter of April 10, 1970.

Sincerely,



Hamer H. Budge
Chairman

Enclosure

31/8/70
26 2d
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LETTER DATED MARCH 13, 1970 FROM NYSE
TO SEC
NEW YORK STOCK EXCHANGE

ROBERT W. HAACK
PRESIDENT

ELEVEN WALL STREET
NEW YORK, N.Y. 10005

CHAIRMAN'S OFFICE
RECEIVED

MAR 13 1970

Third Relieved
SEC. & EXCH. COMM.

March 13, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

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(6/18)

Dear Mr. Chairman:

My staff and our consultants have reported to me the views expressed by your staff at a meeting with them last week and the request for additional data. Since the requested supplemental data bear on material which I submitted to you and the Commission on February 13, I thought it might be appropriate to express in this letter my views on some of the issues raised:

1. The SEC staff indicated that it may be many months before it can complete its review of the NERA proposals for a basic restructuring of commission rates. If this is the case, the industry must have some immediate interim relief. You will recall that at our February 13 meeting, I described the serious financial plight of many firms in the industry on the basis of data through the third quarter of 1969.

2. The view was expressed that the need for immediate rate relief had not been sufficiently documented. It was suggested that the New York Stock Exchange collect and present to the Commission data for the fourth quarter of 1969. Specifically, information was requested on the financial performance of sixty-seven firms during the final quarter of the year in both their security commission business and their other lines of activity.

3. The SEC staff seemed to lean to the view that any interim rate adjustment should be just a minimum to keep member organizations barely solvent, that is, out of bankruptcy. Moreover, in assessing what this amount would be, it was suggested that all types of business done by brokerage firms be considered, not just securities commissions.

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I would like to comment on each of these points and to offer further documentation of the immediacy of the financial problem facing many important firms:

1. We appreciate that the Commission's review of the NERA proposal cannot be done overnight. Needless to say, we are ready to cooperate with you and your staff in this review. But while this evaluation of the NERA study is under way, many firms find themselves in a financial position, described later in this letter, which requires immediate action. Because delays may have adverse repercussions not only on the industry but the general public, we plan to present next week specific proposals designed to moderate the deficits being incurred month after month by a considerable number of member firms.

2. Time does not permit us to collect and analyze financial data for sixty-seven firms during the fourth quarter of 1969 and still respond to the serious financial conditions which prevail. The survey itself would be time-consuming and additional weeks would undoubtedly be required to scrutinize the reports. The very undertaking would make immediate rate relief impossible. We have, however, gathered within the last few days pertinent information on the financial condition of a group of firms so as to enable you to appraise the immediacy of the problem. We are not contending that these firms constitute a statistically representative sample of the industry. Rather, we are offering these data to support what is the fact: that many substantial firms are suffering grievous losses and that prompt relief is required. These firms accounted for approximately 20 per cent of the brokerage business done in 1969.

I am sure I need not dwell on the fact that the securities industry differs fundamentally from other businesses in terms of the interdependence of firms and the public interest in maintaining their financial stability. Therefore, the existence of an emergency situation cannot be measured only by the percentage of firms in financial difficulty but rather by the number and size of those suffering unsustainable deficits. Failures in our industry, even of a few substantial firms, would create financial problems for other firms in the form of fails, dividend claims, and DKs. Thus, a failure of only a few firms could generate a chain reaction of repercussions within the industry, which ultimately might undermine public confidence.

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3. We feel strongly that any adjustment which is to be in effect for more than a few months must go beyond, as has been suggested, just keeping "the patient alive." If all that an adjustment does is to balance income and out-of-pocket expenses, capital is likely to be withdrawn from the brokerage business. Firms will be under pressure to retrench and to forego the very measures needed in our industry at this time to raise the level of productivity. This would itself constitute an improvident and backward step. As one regional member firm stated in a letter to us last week:

"Beginning in the middle of last year, we have as of now reduced fixed operating costs to a point below which any further cuts would necessitate a significant curtailment of our services to our customers. In our Operations Department alone, we have reduced personnel by 25 per cent over the last nine months."

To adopt a policy designed to keep this industry merely at the brink of solvency for an extended period would be to encourage abandonment of all the progressive steps being urged on the industry. Only if a fair return on capital can be realized will capital flow into the brokerage business and remain in it. Only under these circumstances will operational capacity be enhanced, and the public be adequately served.

Furthermore, it does not seem proper to relate consideration of the need for an interim adjustment to the profitability of other phases of a firm's business than its security commission operations. The fact that firms have thus far been willing to subsidize brokerage operations should not be turned into a requirement that they must continue to do so. Some firms were willing to underwrite deficits in the apparent hope that the period of severe losses would be temporary; they are able to do so only for a limited time. Most important, as a basic principle, it is not fair or economically feasible to expect firms to carry on their agency business at a loss. Capital can be shifted within the firm from activities which produce a loss to those which are profitable. Any rational businessman would pull in his horns on business causing losses and that, of course, is what is happening right now. Offices are being closed and merged; customers whose business results in losses are being turned away; and capital is being shifted to more profitable areas of the business.

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No firm can justify for long subsidizing a loss operations. Moreover, we believe that the basic philosophy underlying a recommendation to subsidize the securities commission business represents a dangerous precedent. Suppose the industry were suffering losses on some non-commission part of its business, say, on arbitrage or commodities trading. The philosophy of including all types of business in determining a rate would require higher commissions on brokerage trades to cover these other losses. Would it be sound regulatory policy for the Commission to permit an interim increase if necessary to subsidize losses in the non-commission part of a firm's business? We think not.

Whatever the theoretical merits or equity consideration of the various facets of this problem, such other profits are in fact unavailable to most of the firms studied in our latest survey. Even if one were to grant, for the sake of discussion, the notion that member firms could be induced to subsidize the brokerage business with profits earned on capital elsewhere employed, the facts of the case would seem to make this impossible. Of the ten firms tabulated in our special survey described below, very few had any profits available for transfer. Overall, the facts were as follows:

	Full Year 1969	Third Quarter 1969	Fourth Quarter 1969	January 1970
----- (Millions of Dollars) -----				
<u>Losses on Securities Commission Business</u>	\$98.3	\$34.8	\$23.5	\$8.4
<u>Overall Losses</u>	\$38.3	\$26.9	\$ 4.4	\$4.5

THE NEED FOR IMMEDIATE RELIEF

The I & E Reports for the full year 1969 are just now being received; they have not yet been processed sufficiently to permit their use for detailed analysis of member firms' current financial status. However, a preliminary count indicates that 158 of the 296 firms from whom I & E Reports have been received apparently suffered losses on their securities commission business in 1969. Thus, over 53 per cent

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of the firms reporting so far lost money on their securities business. This fact alone strongly suggests the need for relief. But in order to provide you with an even more current picture, and to go as far toward meeting your Staff's requests as is consistent with the immediacy of the problem, we have gathered additional data.

The Staff has suggested a survey of some 67 member firms (including firms specializing in large orders). Unfortunately, the time required to complete such a survey would be so great as to make immediate relief of the current financial plight impossible. We have, however, collected data from 10 major member firms which, in the aggregate, account for nearly 20 per cent of commission income. These firms currently (January, 1970) employ over 38,000 individuals and carry just under two million customer accounts. The firms are:

Bache & Co., Incorporated
Francis I. DuPont & Co.
Glore Forgan, William R. Staats, Inc.
Goodbody & Co.
Hayden, Stone Incorporated
Hornblower & Weeks-Hemphill, Noyes
E. F. Hutton & Company, Inc.
Shearson, Hammill & Co., Incorporated
Thomson & McKinnon, Inc.
Walston & Co., Inc.

We have not asked these firms to undertake the laborious and time-consuming task of allocating expenses between their securities business and other lines of activity such as sale of mutual fund shares, firm trading, real estate, commercial paper and underwriting. Rather, and consistent with the SEC Staff's desires, we have obtained data on gross security commission income, total gross income and total expenses (as defined in the I & E Report). We have then allocated expenses in accordance with past relationships for these firms in order to determine their profit or loss on their securities commission business. The following facts emerge (the details by firm are appended hereto):

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10 Member FirmsBefore Tax Loss on Securities Commission Business
(Millions of Dollars)

	<u>Loss for Period</u>	<u>Annualized Rate of Loss</u>
First Half 1969	\$44.1	\$ 88.2
Third Quarter 1969	34.8	139.2
Fourth Quarter 1969	23.5	94.0
Full Year 1969	98.3	98.3
January, 1970	8.4	100.8

Thus, these 10 firms lost about \$98 million on their brokerage business for 1969 and in January suffered losses which, at an annual rate, were slightly over \$100 million. (We have excluded data from the largest firm in the industry so as not to present an unbalanced picture, although this firm also sustained losses on its security commission business. If it were included, every one of the losses shown above would increase rather substantially.)

These data, we submit, establish the absolute necessity for immediate relief to this industry. In fact, we have determined that continuation of the current loss rate for some of the ten firms could put them in violation of our capital rule within as few as four or five months.

As detailed above, we maintain that the securities commission business must stand alone and not look to other lines of activity for subsidization. However, you may wish to know that during the third quarter of 1969, this group of firms lost nearly \$27 million (before taxes) on their total business activity, lost over \$4 million in the fourth quarter and lost \$38 million overall for all of 1969. As of January, they were operating at an annualized loss rate, on all activities, in excess of \$54 million per year. Hence, it appears that even on the basis of total profits, inappropriate as we believe this measure to be, these firms are in need of immediate financial relief. Indications are

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that were February data available, even more severe losses would appear.

The appendix data show that deficits were incurred not just by a few firms. In the second half of 1969, each of the ten firms suffered losses on their securities commission business; nine out of the ten on their overall operations. As may be seen, these patterns characterized both the third and fourth quarters. This confirms both the Wright Associates report to which I referred on February 13, and my estimates at that time of fourth quarter results. In the third quarter of 1969, Wright Associates report that of 16 participating firms, accounting for 22.6 per cent of New York Stock Exchange business, operating losses amounted to 15 per cent of total income. Even in the fourth quarter, when some seasonal increase in volume occurred, and when some income-producing year-end reserve adjustments were probably made, one-third of the firms reporting to Wright Associates had a loss.

In sum, then:

1. Data for all firms doing a public business in the first half of 1969 demonstrate the need for immediate rate relief.

2. Preliminary data for such firms show that in the full-year 1969, 158 out of the 296 firms thus far reporting showed losses.

3. Our recent survey, covering almost 20 per cent of the business done, shows that important firms sustained severe losses in both the third and fourth quarters, on both brokerage business and an overall basis.

4. This latter finding is generally supported by the Wright Associates survey.

5. Data for January show that these substantial losses have continued in 1970 and, for the ten firms sampled, came to an annual loss rate of over \$100 million, which exceeds losses for 1969.

I do hope you will appreciate the extent to which we have gone to comply with the Staff's request. We have gathered data for the last quarter 1969 (indeed, for January, 1970); we have set them forth on a firm-by-firm

NEW YORK STOCK EXCHANGE

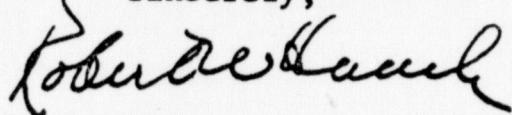
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basis (although names are not revealed to avoid any adverse reaction by customers of these firms); we have even gathered data relating to overall, rather than only brokerage operations.

These figures convey the emergency which exists in the industry today. I shall communicate with you shortly our proposed program for obtaining immediate interim relief.

Sincerely,



PROFIT OR LOSS ON SECURITIES COMMISSION BUSINESS
10 MEMBER FIRMS

Profit before Taxes - Securities Commission Business

<u>Firm</u>	1969				<u>1970</u>
	<u>First</u>	<u>3rd</u>	<u>4th</u>	<u>Full</u>	
	<u>Half</u>	<u>Quarter</u>	<u>Quarter</u>	<u>Year</u>	
----- Millions of Dollars -----					
A	\$- 2.4	\$ 0.8	\$- 1.5	\$- 2.4	\$- 0.4
B	- 2.4	- 1.5	- 0.7	- 4.6	- 0.3
C	- 2.8	- 2.7	- 2.2	- 7.8	- 0.7
D	- 2.6	- 2.7	- 2.4	- 7.8	- 0.9
E	-10.6	- 9.4	- 3.9	-23.8	- 1.7
F	- 4.6	- 3.8	- 1.7	- 9.9	- 1.1
G	- 1.8	- 2.8	- 0.1	- 4.4	- 0.4
H	- 4.8	- 4.5	- 3.8	-10.3	- 1.4
I	- 4.3	- 2.9	- 4.4	-11.5	- 0.5
J	<u>- 7.7</u>	<u>- 5.4</u>	<u>- 2.8</u>	<u>-15.8</u>	<u>- 1.0</u>
10 Firm ggregate	\$-44.1	\$-34.8	\$-23.5	\$-98.3	\$- 8.4

PROFIT OR LOSS ON ALL BUSINESS ACTIVITIES
10 MEMBER FIRMS

Profit before Taxes - All Business Activities

<u>Firm</u>	<u>1969</u>			<u>1970</u> <u>January</u>
	<u>3rd Quarter</u>	<u>4th Quarter</u>	<u>Full Year</u>	
----- <u>Millions of Dollars</u> -----				
A	\$ 1.5	\$- 4.4	\$- 9.8	\$- 1.3
B	- 1.2	0.2	- 1.7	- 0.1
C	- 1.9	- 0.4	- 0.3	- 0.2
D	- 1.0	0.2	3.0	- 0.2
E	- 8.2	- 0.2	-10.8	- 0.6
F	- 2.0	2.0	3.1	- 0.5
G	- 3.7	0.9	- 4.2	- 0.4
H	- 3.0	- 1.0	- 1.8	- 0.7
I	- 1.7	- 2.9	- 4.6	0.1
J	<u>- 5.7</u>	<u>1.2</u>	<u>-11.1</u>	<u>- 0.8</u>
10 Firm Aggregate	\$-26.9	\$- 4.4	\$-38.3	\$- 4.5

EXCERPTS FROM EXHIBIT 61 A-D

CONSTITUTION OF NEW YORK STOCK EXCHANGE

ARTICLE XV - Commissions and Service Charges

Sec. 1 Commissions shall be charged and collected upon the execution of all orders for the purchase or sale for the account of members or allied members or of parties not members or allied members of the Exchange, of securities admitted to dealings upon the Exchange and these commissions shall be at rates not less than the rates in this Article prescribed and shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement direct or indirect. No bonus or percentage or portion of a commission, whether such commission be at or above the rates herein established, or any portion of a profit except as may be specifically permitted by the Constitution or a rule adopted by the Board of Directors, shall be given, paid or allowed, directly or indirectly, or as a salary or portion of a salary, to a clerk or person for business sought or procured for any member or allied member of the Exchange or member firm or member corporation. No member, member firm or member corporation shall, in consideration of the receipt of listed business and at the direct or indirect request of a non-member or by direct or indirect arrangement with a non-member, make any payment or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled.

Sec. 9 Members of the Exchange, member firms and member corporations shall make and collect, in addition to minimum prescribed commissions, such other minimum charges with respect to accounts and services as the Board of Directors may from time to time prescribe. Except as may be specifically permitted by a rule adopted by the Board of Directors, such charges shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement direct or indirect, and no bonus or percentage of such charges, whether such charges be the minimum charges prescribed by the Board or greater charges, shall be given, paid, or allowed, directly or indirectly, or as a salary or portion of a salary to a clerk or to any member of the Exchange, member firm or member corporation, or to any other person, firm or corporation for business sought or procured for any member of the Exchange, member firm or member corporation.

EXCERPTS FROM EXHIBIT 61 A-D

RULES OF BOARD OF GOVERNORS OF
NEW YORK STOCK EXCHANGE

Rule 347. (a) Pursuant to Section 1 of Article XV of the Constitution (¶ 1701), registered representatives may be compensated as follows:

- (1) registered representatives-on a salary or a commission basis,
- (2) branch office managers-on a salary or a commission basis, with the prior approval of the Exchange, they may receive a percentage of the net profit of the branch office.
- (3) a registered representative who is also head of a department of the organization-may, with prior approval of the Exchange, receive a percentage of the net profit of his department, and
- (4) bonuses-registered representatives may participate, with the prior approval of the Exchange, in bonus distributions.

Rule 383. Commencing April 6, in addition to the minimum commission computed in accordance with the provisions of paragraph 2(a)(1) of Article XV of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of \$15 or 50% of such minimum commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order. While this charge is in effect, transaction size and other limitations generally imposed since April 1, 1969, by a member organization on small orders shall be suspended.

EXHIBIT 63

HISTORY OF SERVICE CHARGES ADOPTED BY NYSE

277A

Article XIX Section 7 of the Constitution was adopted on December 29, 1937 as follows:

"Each member of the Exchange or firm registered thereon carrying accounts for customers shall make and collect service charges on inactive accounts at not less than such rates as shall from time to time be prescribed by the Governing Committee. Such service charges shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement direct or indirect, and no bonus or percentage of a service charge, whether such charge be at or above the rates prescribed by the Governing Committee, shall be given, paid or allowed, directly or indirectly, or as a salary or portion of a salary to a clerk or to any member of the Exchange or firm registered thereon, or to any other person, firm or corporation for business sought or procured for any member of the Exchange or firm registered thereon."

This provision substantially continues in effect today in Article XV, Section 9, absent the restriction to inactive accounts, plus an expansion to refer to member corporations, which in 1953 became permitted.

SERVICE CHARGES ADOPTED BY NYSE PURSUANT
TO ARTICLE XV SEC. 9

The following was adopted December 29, 1937, effective January 3, 1938. Rescinded January 12, 1938.

Sec. 9 (a) Each member of the Exchange or firm registered thereon carrying accounts for customers shall, at the end of each calendar month, make a service charge to each customer whose "combined account" as defined in subsection (b) hereof, has, at the close of business on the last business day of said month, a debit balance of \$1,000 or less, or no debit or credit balance, or a credit balance of \$2,500 or less, unless during such calendar month said member or firm has completed for such customer on a brokerage basis, or with such customer on a principal basis, one or more transactions in securities or commodities on which the total commissions were at least \$3 or would have been \$3 if all transactions had been done on a brokerage basis. In computing such total commissions, if no minimum commission is prescribed with respect to a transaction, the rate shall be that customarily charged by the member or firm.

(b) For the purposes of this rule the "combined account" of a customer shall be computed by combining all accounts carried in his name in which there are any security positions.

(c) When a service charge is required by subsection (a) hereof, it shall be made upon the "combined account" of the customer and shall be at not less than the following rates: 25¢ for each item in such "combined account" up to and including 40 items, and

10¢ for each item in excess of 40, provided that the minimum charge shall not be less than \$2. For the purpose of computing the charge, each 100 shares or fraction thereof of any issue of stock and each \$10,000 of principal or fraction thereof of any issue of bonds shall be deemed a single item. Rights to subscribe, warrants and scrip shall be included in computing the number of items in an account when evidenced by physically separate instruments; there shall be treated as one item the aggregate of all such instruments which evidence the right of the holder to purchase or otherwise acquire the same security or property upon the same terms and conditions. Both long and short positions shall be included in computing the number of items of such "combined account".

(d) If a customer pays or has agreed to pay to the member or firm a fee for services rendered during such month for investment counsel, statistical service or other services, the amount of such fee for such month shall be deductible from the service charge herein established, or if the amount of such fee exceeds the service charge herein established, no service charge shall be required.

(e) No service charge need be made to a customer at the end of a month if, at any time in such month the customer had no account in which there was a security position.

January 10, 1940, the following Rule 490 was adopted pursuant to Article XV, Section 9, effective March 1, 1940. Rescinded March 27, 1940.

"RULE 490.(a) Except as may be otherwise permitted by the Committee on Member Firms, member firms shall charge and collect at not less than the rates herein prescribed for the following services performed in connection with securities admitted to dealings on the Exchange:

(1) On business for a member (except as covered by (2) hereof), allied member or non-member, resident within the continental United States or Canada, including a joint account in which any such person is interested, but excepting an international joint arbitrage account of a member firm and a non-member:

(i) Custodian Charge

To cover all services, except those for which specific charges are otherwise provided, which are performed with relation to an account (other than a margin account) containing securities: an average of \$1.00 minimum per month for each such account held on the last day of any regular monthly or quarterly accounting period, if such account has been open during the entire accounting period.

The charge need not be made in an account containing a debit balance even though there are securities in

such account which have been segregated as excess collateral nor in an account in which a purchase or sale of a security has occurred during the accounting period. A service charge debited in an account or the creation of a debit in an account for the purpose of avoiding the custodian charge shall not exempt such account from such charge.

(ii) Cutting of Coupons (In Accounts Other Than

Accounts Containing a Debit Balance)

10¢ per coupon, except that on bonds of less than \$1,000 principal amount the charge may be computed on the basis of 10¢ per each \$1,000 or portion thereof of principal amount; provided that the minimum individual charge to any customer shall be 25¢ per issue, and provided further that the charge to any customer for cutting coupons of any individual issue due on the same day need not exceed \$10.00.

(iii) Dividends, Rights or Interest on Securities
Not in Possession or Custody of a Member,
Which are Subject to Claim by Others

For the collection by a member of a dividend, rights or interest, subject to claim by others, on a security registered in the name but not in the possession or custody of such member, or for the recovery of a dividend, rights or interest on a security

registered in the name of a non-member, which security the holder has failed to transfer; a charge of 1/4 of one percent of the value of such dividend, right or interest, to be paid to the member in whose name the security is registered or to the member who originally recovers such dividend, rights or interest from a non-member in whose name the security is registered; provided that the minimum charge shall be \$2.00 for each claim or collection, except that if the amount involved is less than \$20.00 the minimum charge shall be 10% of the amount involved, and provided further that the charge for any claim or collection need not exceed \$10.00 per issue.

For stock or scrip dividends the charge shall be computed on the fair market value thereof on the day of the taking of record by the corporation for the purpose of the dividend.

For rights, when the claim is made on or before the day of expiration, the charge shall be computed on the fair market value thereof on the day of the taking of record by the corporation for the purpose of the rights, and, when claim for the cash equivalent is made after the day of expiration, on the fair market value on the day of expiration.

The charges herein contained do not apply to the collection or recovery of a dividend, rights or interest accruing on a security purchased which sells ex-dividend, ex-rights or ex-interest during the pendency of the contract, nor upon the collection or recovery of a dividend, rights or interest accruing on a security where such security had been delivered on a contract with a due-bill attached pursuant to a ruling of the Committee on Floor Procedure.

Nothing herein contained shall be construed to impose upon a member on whom a claim is made any responsibility for the collection of a dividend, rights or interest in respect of a stock certificate or bond registered in the name of a non-member, the assignment of which was guaranteed by the member, unless the member is able, through reasonable means, to collect the same from a non-member.

(iv) Transfers

Any transfer made on instructions of a customer or in order to make a certificate which is not in proper form for delivery available for sale, which requires the use of forms other than or additional to those prescribed in any rule of the Committee on Floor Procedure with respect to the settlement of contracts; a minimum charge of 1¢ per share and 10¢

per bond; provided that the minimum charge per issue for such a transfer shall be \$2.00.

Any other transfer (except a transfer in connection with a current commission transaction where transfer instructions are given within seven days after full cash payment is made or within seven days after margin is supplied) made on instructions of the customer: a minimum charge of 1¢ per share and 10¢ per bond; provided that the minimum charge per issue for such a transfer shall be 50¢.

Further provided however that the charge for any transfer need not exceed \$10.00 per issue.

(v) Transcripts of Statements, Except Duplicate Copies of Statements Furnished Currently to a Customer

50¢ per sheet - minimum \$1.00

Any computations made at a customer's request shall be charged for on a basis of the fair cost of clerk hire.

(vi) Other Special Services

Charges for such services may be on a mutually agreed upon basis or such services may be performed free of charge.

(2) On business for an omnibus account of a member correspondent resident within the continental United States or Canada:

Charges for the services described in subparagraph (1) hereof may be on a mutually agreed

upon basis, or such services may be performed free of charge.

(b) Any member, allied member or member firm who shall be deemed by the Committee on Member Firms to have evaded the fair application of this rule by subterfuge or device shall be deemed to have violated the rule the same as if it were wilfully breached.

(c) Notwithstanding the provisions of paragraph (a) hereof, any member firm may adopt a different basis of service charges in relation to an account, and need not apply, as individual charges, the specific charges enumerated in paragraph (a), provided that the total amount charged an account for services (other than for investment advisory or statistical services) during any accounting period has amounted to as much or more than would have been required had the specific charges been made during the same period."

Pursuant to Article XV Section 9, the Interim Service Charge was adopted April 2, 1970, effective April 6, 1970. Rescinded March 24, 1972.

INTERIM SERVICE CHARGE

Rule 383. Commencing April 6 through July 5, 1970, in addition to the minimum commission computed in accordance with the provisions of paragraph 2(a)(1) of Article XV of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of \$15 or 50% of such minimum commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order. While this charge is in effect, transaction size and other limitations generally imposed since April 1, 1969, by a member organization on small orders shall be suspended.

Interim Service Charge amended on July 2, 1970 as follows:

"Commencing April 6 through October 3, 1970, in addition to the minimum commission computed in

accordance with the provisions of paragraph 2(a)(1) of Article XV of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of \$15 or 50% of such minimum commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order. While this charge is in effect, transaction size and other limitations generally imposed since April 1, 1969, by a member organization on small orders shall be suspended."

The above Rule was again extended on December 1, 1971.
Rescinded March 24, 1972.

No service charges were instituted since March 24, 1972.

EXHIBIT A - NYSE EDUCATIONAL CIRCULAR NO. 285 DATED
APRIL 2, 1970

NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

April 2, 1970

TO: Managing Partner or Chief Executive Officer

SUBJECT: Interim Service Charge

The Board of Governors has adopted a new Rule 383 as follows:

"Commencing April 6 through July 5, 1970, in addition to the minimum commission computed in accordance with the provisions of paragraph 2(a)(1) of Article XV of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of \$15 or 50% of such minimum commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order. While this charge is in effect, transaction size and other limitations generally imposed since April 1, 1969, by a member organization on small orders shall be suspended."

The final sentence of the new rule will require firms to discontinue restrictions adopted in the past year on small orders or accounts such as not handling orders or accounts under some fixed dollar minimum. This does not, of course, prevent firms from confining their business to accounts of types traditionally handled by them.

The Securities and Exchange Commission expects that the service charge will accrue to the member organization which obtains the customer order, whether that organization carries the account or not, and whether it clears the order or not, and that it will be prudently employed to improve the operational and financial position of the firms responsible for the account. Consequently, an appropriate amendment should be made in commission splits in clearing agreements between introducing, carrying or clearing organizations to extend the benefits of the additional income in the same relationship as previously agreed for commissions.

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The Exchange has reviewed with representatives of the Operations Committee of the Association of Stock Exchange Firms the procedures for computing and disclosing the charge. The following guidelines are the result of that review. While adherence to them is not mandatory, both the Exchange and the Operations Committee strongly recommend them in the belief that standardized procedures will be helpful to both member organizations and their customers in applying the charge.

If an order for 1,000 shares or less is completed in one execution, the charge can be computed immediately. If an order for more than 1,000 shares is completed in one execution, the charge need not be applied and that fact is known immediately. In either case the confirmation can be computed without delay.

If an order for 1,000 shares or less is not completed in the first execution, it is known immediately that the charge will be applicable. In this case, the charge can be assigned to the first execution. If there is a question as to whether the charge will be \$15 or 50% of the commission, the charge can be computed on the assumption that the total order will be executed during the course of the day. In this case, if the full order is not executed during the course of the day, a review procedure will have to be instituted to make certain that the service charge has been correctly computed. However, this review procedure may be by-passed if the charge as computed on the first execution of an order for less than 1,000 shares is \$15 rather than 50% of the applicable commission.

If an order for more than 1,000 shares is not completed in one execution, the charge can be omitted from the first execution on the assumption that during the course of the day either the full order or more than 1,000 shares of the order will be executed. In this case a review procedure will be necessary at the end of the day to determine whether the charge should be applied if the executions total 1,000 shares or less. This review procedure can be made a part of the normal review for orders over 1,000 shares in connection with the volume discount.

The service charge may be shown on the confirmation either separately or in combination with the commission. In the latter case it should be made clear on the confirmation that the combined amount contains both the commission and the charge. This can be accomplished by changing the heading "Commissions" to "Commissions and Service Charges" or by including on the confirmation the phrase "Total under 'Commissions' includes Service Charges."

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The member organization will have to maintain separate records of commissions and service charges. The service charge will not be used in arriving at the New York Stock Exchange 1% charge on net commissions.

Recognizing that despite all precautions institutions may arrive at a slightly different total of commissions and charges on a partial execution of an order, the Exchange strongly recommends that member organizations urge their institutional customers to direct agent banks to receive against payment when a money difference could be accounted for by discrepancies in computation of the service charge. The difference could then be reconciled between the member organization and its institutional customer. This procedure has already been recommended in Educational Circular #262 dated May 28, 1969, as follows:

"The customer agrees in writing with the member organization to instruct its agent bank to receive all securities delivered for its account by the member organization and to pay the amount of money specified by the member organization. Any differences which might occur because of error in the amount the member organization collects from the bank and the true amount due will be settled thereafter directly between the customer and the member organization. The member organization should agree to send a duplicate confirmation to the designated department of the receiving bank at the same time that confirmation is made to the customer. Further, for the convenience and protection of the receiving bank in such instances, member organizations should make sure that all trade confirmation data are included on or attached to the delivery ticket. This type of agreement further might instruct the agent bank to deliver to the member organization any security held by the bank for the customer's account upon payment by the member firm of the amount shown on a copy of their sale confirmation. A form of agreement for such standing instructions is also attached."

For purposes of determining the applicability of the service charge, the number of shares included in the order must be given at the time the order is entered. This means that a "More to Come" designation may not be used to avoid imposition of the charge on a series of orders separately entered at different times.

Questions concerning the service charge should be directed to Rudolf Schreiber, Manager Commission and Quotations, at 623-5226, or James Swartz, Assistant Director Member Firms Department, at 623-5058.

Robert M. Bishop
Robert M. Bishop

M.F. Educational Circular No. 286

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EXHIBIT B - NYSE EDUCATIONAL CIRCULAR NO. 286 DATED
APRIL 9, 1970
NEW YORK STOCK EXCHANGE

Department of Member Firms

April 9, 1970

TO: Managing Partner or Chief Executive Officer

SUBJECT: Interim Service Charge

Since M.F. Educational Circular No. 285 was distributed to the membership on April 2, the Securities & Exchange Commission has clarified the Commission's position on two material points regarding the interim service charge.

The SEC stated in its letter of April 2 to the Exchange that "The Commission expressly predicates its non-objection to the interim increase in charges upon its expectation that the Exchange will take all steps necessary to assure that full brokerage services for small investors are restored and that transaction size and other limitations on such accounts imposed in the last year by the Exchange's membership will be removed."

The Exchange's Board of Governors adopted the Commission's suggestion by adding the following sentence to Rule 383:

"While this charge is in effect, transaction size and other limitations generally imposed since April 1, 1969, by a member organization on small orders shall be suspended."

In referring to "transaction size and other limitations" in its letter of April 2 to the Exchange, the SEC emphasizes that in not objecting to the imposition of an interim service charge it intended that all restrictions on small orders including minimum house commissions and service charges, as well as restrictions on not handling orders or accounts under some fixed dollar minimum, imposed in the last year or so, should be removed while the interim service charge is in effect.

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The Commission has also specifically directed that charges above the minimum commission and interim service charge made since the Rule became effective on April 6 should be refunded to customers.

The above interpretations do not, of course, prevent firms from confining their business to accounts of types traditionally handled by them. The service charge and the above related interpretations do not apply to transactions in bonds.

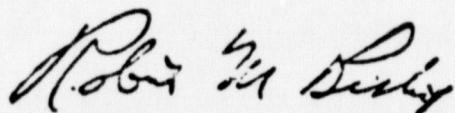
The Commission further stated in its April 2 letter that "We also expect that the Exchange will undertake to make certain that the additional revenues produced by the interim surcharge will be received by the member firm obtaining the customer's order, and will be prudently employed by its member organizations to improve their operations and financial position."

The SEC has clarified its position on this point by suggesting that an appropriate amendment may be made, rather than should be made, in commission splits in clearing agreements between introducing, carrying or clearing organizations and then in amounts not greater than the existing percentage of splits to the carrying or clearing organization under agreements in effect on April 2, 1970.

The following additional interpretation is in answer to questions from member organizations in the past few days.

As a general rule, where the volume discount applies no service charge is applied. Conversely where the service charge applies no volume discount is applied. Since the volume discount does not apply on an odd lot above 1,000 shares, for example, 1,050 shares, neither the volume discount nor the service charge is applicable.

Questions concerning the service charge should be directed to Rudolf Schreiber, Manager Commission and Quotations, at 623-5226, or James Swartz, Assistant Director Member Firms Department, at 623-5058.



Robert M. Bishop
Director

EXHIBIT E-- NYSE SUBMISSION TO SEC DATED JUNE 29, 1970 *293A*

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The New York Stock Exchange submission of data in support of the service charge extension follows:

June 29, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Mr. Chairman:

In my letter of June 18th, I promised to provide the Commission with more recent statistics, specifically May data, on the effect of the service charge on member firm profitability. We have now completed this analysis. The attached report provides not only more current information but it includes an allocation of profit and loss to the securities commission business. It also analyzes the effect of the service charge on the profitability of three broad categories of firms: Retail firms, defined as those with average size transactions between 1 and 399 shares; diversified firms with average trades between 400-999; and institutional firms with an average of 1,000 shares and more.

The overall profitability of member firms has deteriorated markedly. During the last quarter of 1969, about two-thirds of all firms were in the black. By contrast, in the months of April and May, 1970, two-thirds were showing losses. Not only were fewer firms in the profit column, but the dollar amount of profits shrank dramatically. During the fourth quarter of 1969, the firms in our sample -- accounting for two-thirds of the industry -- earned a net profit of \$88.6 million. In the most recent months of April and May, these firms lost \$28.7 million and \$20.6 million. I should point out that these losses were incurred despite the fact that our volume averaged 10.1 million shares per day in April and 12.3 million in May.

The report shows the importance of the service charge, particularly to firms specializing in retail orders. For these firms, the service charge produced \$8.4 million in April and \$16.2 million in May. Had it not been for the service charge, their losses on commission business would have mounted in April from \$23.4 million to \$31.9 million, and in May from \$9.9 million to \$26.1 million. I might add that the retail firms received over 90 percent of the revenues generated by the service charge.

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As you know, the service charge has not produced the income expected of it. At the level of volume in April and May, the service charge provided only two-thirds of its anticipated revenue. But even if all of it had been realized, the firms would have had a hard time breaking even. Our statistics indicate that the actual cost to the public has averaged less than \$10 per order because of the 50% maximum limitation.

On the basis of the attached analysis, it is clear that the service charge, though inadequate, is an essential interim measure and we renew our request for its extension.

Sincerely,

Robert W. Haack

THE EFFECT OF THE SERVICE CHARGE ON MEMBER FIRM PROFITABILITY

Introduction

The interim service charge was implemented to provide financial relief to firms doing a securities commission business with the public. It was an emergency measure designed to restore some degree of financial health to the securities commission business. Its continuation today is as urgent as ever. In the first quarter of this year, retail firms suffered twice the losses on their securities commission business incurred in the final quarter of 1969. Even with the service charge, the monthly losses in April-May were larger than in the last quarter of 1969. Declining volume and stock prices have caused revenues to fall off more rapidly than costs. In addition, the severe erosion in stock volume has meant that revenues generated from the service charge have fallen far short of expectations.

The SEC and NYSE staffs agreed to procedures for monitoring the effects of the service charge. Specifically, it was agreed that detailed data would be gathered for 77 firms (including the 50 largest) accounting for 69 percent of member firms' gross income in 1969. These figures permit an extensive analysis of the financial situation of firms doing a public commission business. At this time, complete information has been processed for 74 of the 77 firms for the period from the fourth quarter of 1969 to May, 1970. The 74 firms accounted for 67 percent of the industry's total gross revenue and 65 percent of its security commission income in 1969.

The overall profitability of member firms has deteriorated markedly from the end of 1969 through the spring of 1970. Around two-thirds of the firms in the sample were operating at a profitable level during the last quarter of 1969. In the months of April and May, 1970, two-thirds were showing losses. In other words, one-third of the firms under study have gone from operating in the black to running in the red between the latter part of 1969 and the spring of 1970.

Not only were there progressively fewer firms in the black, but there has been a steady shrinkage in the dollar amount of their profits. During the fourth quarter of 1969, the firms in the sample earned a net profit of \$38.6 million; in the first quarter of 1970, \$20.2 million; and in the months of April and May, they lost \$28.7 million and \$20.6 million, respectively. It may be more instructive to consider these figures on an annual basis. (This also permits a direct comparison of quarterly and monthly figures.) If the fourth quarter 1969 profits were projected for a full year, these firms would have earned \$354.2 million. The first quarter profits annualized come to \$80.8 million. A sharp contrast is provided by the most recent data. The April and May deficits annualized come to \$344.5 million and \$247.2 million, respectively.

Due to the heterogeneity of the NYSE membership in terms of business mix and clientele, the overall figures disguise important underlying trends. For this reason, it may be more meaningful to classify the firms according to their type of business. We therefore separated the firms in our sample into three groups on the basis of their average shares per order in 1969: Retail firms, defined as those with average size transactions between 1 and 399 shares; a middle group of diversified firms with average trades between 400 and 999 shares; and institutional firms with an average of 1,000 shares and more.

The service charge was designed to have its greatest impact on the retail firms. The following discussion therefore begins with this group and considers their overall profitability as well as their profits and losses on securities commission business only. The profitability of the securities commission business was obtained by asking each firm for its securities commission income and by allocating each line of expense according to the firm's 1969 I & E proportions.

Retail Firms -- Securities Commission Income (SCI).

The security commission business has remained an unprofitable activity for the 54 firms included in the retail category. In the last quarter of 1969, less than one-third of these firms earned any profit on their SCI activity. During the first quarter of 1970, and in the ith of April, about 80% of the retail houses lost money on their public commission business. The May figures look somewhat less dismal, both because volume was above 12 million shares per day and the service charge was collected for the full month. Yet, over 57

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percent of the group suffered deficits on SCI business. Had the service charge not been in effect during May, 82 percent of the firms, instead of 57 percent, would have lost money on their commission business.

The dollar amounts of losses suffered by the retail houses on SCI activity are shown in Table II. These firms suffered losses of \$42.9 and \$83.1 million during the last quarter of 1969 and the first quarter of 1970. In the months of April and May, they lost \$23.4 and \$9.9 million, respectively. On an annual basis, that is assuming a continuation of the losses for a full year, the fourth quarter losses become \$171.5 million. By comparison, the first quarter losses annualized come to \$332.5 million. The April and May deficits annualized total \$281.2 and \$119.1 million, respectively.

The retail firms in our sample received \$8.4 million in service charges during April and \$16.2 million in May. Had it not been for this service charge, the losses in April would have risen from \$23.4 to \$31.9 million, and in May from \$9.9 to \$26.1 million. Thus, even in the month of May, with volume up, the annual deficit would have been \$313 million without the service charge -- a deficit much above the \$171 million per annum in the fourth quarter of 1969.

The retail firms received over 90 percent of the revenues generated by the service charge. Nonetheless, the amount has been insufficient to eliminate, on average, the losses involved in the retail commission business. At the level of volume in April and May, the service charge provided about two-thirds of the anticipated revenue. But even if all of it had been realized, the firms would have had a hard time breaking even.

Retail Firms -- Overall Profits.

Overall profits for retail firms show an even bleaker trend than SCI activity alone. During the last quarter of 1969, this group earned an overall profit before taxes of \$33.2 million. Activities other than commission business provided profits of \$76.1 million. However, profits on these other operations have declined to \$70 million in the first quarter of 1970 and a deficit of \$4 million during May. The service charge is of course justified and needed on the basis of securities commission operations alone. Nonetheless, it should be noted that retail firms are unable to subsidize losses on commission business with earnings from other lines of activity.

Middle Firms -- SCI Business and Overall Profits.

There were 13 firms in the sample which averaged between 400-999 shares per order in 1969. Although their SCI business remained profitable during the periods under study, the trend would have been sharply downward if not for the service charge. Commission profits declined from \$6.7 million in the last quarter of 1969 to \$4.6 million in the

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first quarter of 1970 and \$1.4 million in April. In May, the total came to \$2.6 million, of which half was accounted for by the service charge. Although these firms received less than 8 percent of the revenues generated by the interim fee, the service charge was crucial in reversing the downward trend in the profitability of their SCI business.

The overall business of these diversified firms shows a much poorer picture. At annual rates, these firms suffered deficits of \$32.3 million in April and \$48.7 million in May.

Institutional Firms -- SCI Business and Overall Profits.

Seven firms fell into the institutional category. Profits on their commission business have declined since the fourth quarter of 1969. But this trend has been vastly overshadowed by deficits in other lines of activity. Overall, these firms sustained annual rates of losses of \$32.8 million in May, compared with \$80.1 million in April.

In view of the fact that the service charge is only a slight proportion of the total revenue of these firms, it does not seem appropriate to analyze their financial situation in this connection.

* * *

On the basis of the above analysis, it is clear that the service charge has been an essential element in preventing an even more serious financial picture developing among the retail firms. Although the service charge has been insufficient to restore profitability, it has served to reduce the losses suffered by these firms on their SCI business from an annual rate of \$330 million in the first quarter of this year to \$119 million in May. The statistics indicate that the actual cost of the service charge to the public has not been \$15 but has averaged less than \$10 because of the 50% maximum ceiling imposed. The above data clearly support the need for continuation of the service charge at this time.

TABLE I

NUMBER AND PERCENTAGE OF FIRMS WITH PROFITS AND LOSSES ON SCI

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
Retail Firms				
Number with Profits	17 31.5%	10 18.5%	11 20.4%	23 42.6%
Number with Losses	37 68.5%	44 81.5%	43 79.6%	28 57.4%
Middle Firms				
Number with Profits	12 92.3%	10 76.9%	10 76.9%	12 92.3%
Number with Losses	1 6.7%	3 23.1%	3 23.1%	1 6.7%
Institutional Firms				
Number with Profits	7 100.0%	5 71.4%	4 57.1%	5 71.4%
Number with Losses	0 0.0%	2 28.6%	3 42.9%	2 28.6%
TOTALS				
Number with Profits	36 48.6%	25 35.5%	25 35.5%	40 54.1%
Number with Losses	38 51.4%	49 64.5%	49 64.5%	34 45.9%

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TABLE II

DOLLAR AMOUNT OF PROFITS AND LOSSES ON SCI BUSINESS
(millions of dollars)

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 1, 1970	Month Ending May 31, 1970
<u>Retail Firms</u>				
Actual	(\$ 42.9)	(\$ 83.1)	(\$ 23.4)	(\$ 9.9)
Annualized	(\$171.5)	(\$332.5)	(\$281.2)	(\$119.1)
<u>Middle Firms</u>				
Actual	\$ 6.7	\$ 4.6	\$ 1.4	\$ 2.6
Annualized	\$ 26.8	\$ 18.2	\$ 17.0	\$ 31.7
<u>Institutional Firms</u>				
Actual	\$ 16.6	\$ 11.5	\$ 3.2	\$ 4.1
Annualized	\$ 66.4	\$ 46.1	\$ 39.0	\$ 49.5
<u>TOTALS</u>				
Actual	(\$ 19.6)	(\$ 67.0)	(\$ 18.8)	(\$ 3.2)
Annualized	(\$ 78.4)	(\$268.0)	(\$225.6)	(\$ 38.4)

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TABLE III

NUMBER AND PERCENTAGE OF FIRMS WITH PROFITS AND LOSSES ON OVERALL BUSINESS

	<u>Quarter Ending December 31, 1969</u>	<u>Quarter Ending March 31, 1970</u>	<u>Month Ending April 30, 1970</u>	<u>Month Ending May 31, 1970</u>
<u>Retail Firms</u>				
Number with Profits	30 55.0%	16 29.0%	12 22.2%	16 29.6%
Number with Losses	24 44.4%	38 70.4%	42 77.8%	38 70.4%
<u>Middle Firms</u>				
Number with Profits	12 92.3%	11 84.6%	7 53.8%	7 53.8%
Number with Losses	1 6.7%	2 15.4%	6 46.2%	6 46.2%
<u>Institutional Firms</u>				
Number with Profits	6 85.7%	6 85.7%	4 57.1%	4 57.1%
Number with Losses	1 14.3%	1 14.3%	3 42.9%	3 42.9%
<u>TOTALS</u>				
Number with Profits	48 64.9%	33 44.6%	23 31.1%	27 36.5%
Number with Losses	26 35.1%	41 55.4%	51 68.9%	47 63.5%

EXHIBIT E

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TABLE IV

DOLLAR AMOUNT OF PROFITS AND LOSSES ON OVERALL BUSINESS
 (millions of dollars)

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
<u>Retail Firms</u>				
Actual	(\$ 33.2)	(\$ 13.6)	(\$ 19.3)	(\$ 13.8)
Annualized	(\$132.8)	(\$ 54.2)	(\$232.1)	(\$165.7)
<u>Middle Firms</u>				
Actual	\$ 25.8	\$ 11.1	(\$ 2.7)	(\$ 4.1)
Annualized	\$ 10.3	\$ 44.5	(\$ 32.3)	(\$ 48.7)
<u>Institutional Firms</u>				
Actual	\$ 29.5	\$ 22.6	(\$ 6.7)	(\$ 2.7)
Annualized	\$118.1	\$ 90.5	(\$80.1)	(\$ 32.8)
<u>TOTALS</u>				
Actual	\$ 88.5	\$ 20.1	(\$ 28.7)	(\$ 20.6)
Annualized	\$354.0	\$ 80.4	(\$344.4)	(\$247.2)

EXHIBIT E

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**EXHIBIT F - STATEMENT BY MR. ROBERT W. HAACK
BEFORE SEC DATED FEBRUARY 13, 1970**

THE URGENCY FOR AN IMMEDIATE COMMISSION INCREASE

(Statement by Mr. Robert W. Haack before the
Securities & Exchange Commission, February 13, 1970)

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Introduction

Four of every ten NYSE member firms doing a public business lost money on security commission income (including net margin interest income) in the first half of 1969. Their cumulative loss amounted to \$58 million. Losses ranged up to \$5.7 million, with 13 firms losing over \$1 million and 51 losing over \$250,000. The profit squeeze reflects the industry's attempts to continue to upgrade and modernize operations in the face of a drop in income and sharply rising costs. Prices paid by the industry for the goods and services it buys rose an estimated 6% last year alone, and close to 60% since the last commission rate hike in 1958.

In the face of these financial results, it takes little imagination to foresee that member firms in their effort to minimize losses will have no recourse but to trim the quality of their services to customers, unless revenue relief is forthcoming. Even more adverse to the interests of the investor and to confidence in the securities markets would be the repercussions resulting from financial failure.

Despite their precarious profit situation, NYSE member firms as yet have hesitated to take cost-pruning steps where the effect would be to impair their ability to handle future volume increases. Very much in their minds has also been the risk of a repetition of the 1968 paperwork situation. At present, automation expenditures among NYSE firms are running at a \$100 million annual rate. By the end of this decade, they are expected to be approaching \$800 million a year. In 1969, employment associated with security commission income continued to rise despite declining income and profits. Non-sales employment was 84,900 at mid-year, some 5,000 greater than at year-end 1968.

However, even a pickup in volume is not likely to produce reasonable profit levels for a substantial number of member firms with relatively low revenues per ticket. This is indicated by our data on transaction revenues. For example, firms which suffered losses in January-June 1969, would have to increase their aggregate SCI 14% merely to break even -- and this allows for no related increases in costs other than sales commissions, floor brokerage and clearance charges. Only a fraction of the income shortfall could be attributed to the 3% dip in average daily volume between 1968 and the first half of 1969. Even if volume had been sustained at the 1968 level, an income increase of 10.5% would have been required to pull the loss firms up to the break-even point.

Return on Capital

The \$80.1 million pre-tax profit earned on SCI in the first half of 1969 translated into the equivalent of a 3.5% annual after-tax return on capital, and even this depressed rate was due to net margin interest income rather than to security commission profits. On the basis of available data for the latter half of 1969, the actual return for the year is even lower.

The poor profit performance can be better appreciated in the perspective of recent historical experience in American industry generally. Analysis of a group of 51 industries representing virtually the whole range of American enterprise indicates an average five-year after-tax return on capital (1964-68) of 12%. (By far the lowest return was for railroads, 4.7%.) Only a quarter of all industries had returns of under 9.8%.

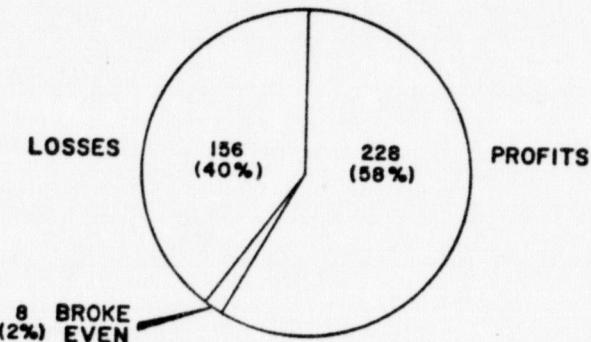
Because of the risks in the securities business, a more valid comparison is the return on security commissions with returns in industries in the upper earnings range. As is generally acknowledged, the greater the volatility of annual profits the greater the return necessary to compensate for these risks. Capital will not flow to risk enterprises unless adequately compensated. Analysis of five-year average return on capital shows an upper quartile return of 12.8%. About one-sixth of that group experienced returns in excess of 15%. Two industries experienced returns in excess of 20% -- toiletries and cosmetics (24.4%) and mobile homes (21.2%).

Distribution of Return on Capital -- 1969

The average 3.5% after-tax return on SCI capital in the first half of 1969 understates the urgency of a sizeable segment of the industry for quick rate relief. Of 392 firms analyzed, 156 lost money on their security commission income (including net margin interest income) and eight broke even. Losing firms accounted for 37% of security commission income. (If all lines of business are considered, 117 firms suffered losses -- about one-third of member firms doing a public business.)

NYSE MEMBER FIRMS WITH PROFITS OR LOSSES
1st HALF 1969

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Among the 156 firms that experienced losses on SCI income in 1969, fully one-quarter had losses equivalent to over 25% of capital and over one-third had losses in the 11% to 25% range.

Among the 228 firms with SCI profits, about one in four had after-tax profits in excess of 15%, while about one in three had after-tax profits of 5% or less.

Taking all 392 firms together, the proportion with after-tax returns in excess of 15% was only one out of six. At the other end of the scale, the proportion of all firms with losses on their capital in excess of 15% was one out of five. One out of ten firms experienced losses of more than 25% on their invested capital. Obviously, such monumental losses cannot be sustained by any industry for very long.

LOSS OR AFTER-TAX RETURN ON CAPITAL
FIRST-HALF 1969 AT ANNUAL RATES

Profit or Loss Rate (Per cent)	Number of Firms	Proportion of Total Firms (Per cent)
Losses		
51% & over	14	4%
-26 - 50	25	7
-16 - 25	32	8
- 6 - 15	44	11
- 1 - 5	41	10
Total, loss firms	156	40%
Broke even	8	2%
Profits		
1 - 5	83	21
6 - 15	83	21
16 - 25	34	8
26 - 50	14	4
51% & over	14	4
Total, profit firms	228	58%
Total, all firms	392	100%

Profitability and Ticket Size

A major factor contributing to profitability, or lack of it, is commission earned per ticket. This shows up clearly in first-half 1969 income and expense data. Firms with pre-tax profits on SCI grossed an average of \$56 per transaction, 1.4 times larger than the \$40 average for all firms with losses. Particularly striking are the extremes in ticket size among the most profitable firms and those with the largest rates of loss. The ten firms with the largest pre-tax profits as a per cent of SCI (excluding margin interest income) averaged \$512 in commissions per transaction. This compares with only a \$31 average for the ten firms with the largest relative losses. It is clear that major losses were centered in firms writing the smaller, most frequent types of orders.

In all, 155 firms had commissions per transaction below the \$39.69 average for all loss firms. Of that total, seven in ten suffered losses. Conversely, 106 firms had commissions per ticket in excess of the \$56.12 average for all profitable firms. Of those, seven in ten made a profit.

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These results underline the critical need for prompt enactment of a rate structure which will not only increase overall revenues, but restore balance to the commission schedule -- enabling firms to earn a fair rate of profit no matter where they choose to concentrate their commission business, whether on large or small orders. For most firms, that marketing choice does not exist today. The small order business produces a loss for seventy per cent of the firms engaged in it. As the economic backbone of a major industry, the commission schedule -- in the interests of both investors and the quality of the securities markets themselves -- must restore the incentives to develop and service all orders.

Member Firm Profitability -- Third Quarter

Unfortunately, industry-wide income and expense data are not available beyond the first-half of 1969. However, limited data for the third-quarter are available from Wright Associates, a management consulting firm that does continuing financial analyses for a number of NYSE member firms.

The data from Wright Associates offer evidence of further deterioration in the industry's bleak profit picture in the third-quarter of 1969. The 16 firms reporting to Wright Associates, together accounting for 22.6% of NYSE business in the third quarter, had operating losses equivalent to 15% of total income, but before reserves, interest on capital and income taxes. In other words, the sample firms, in effect, paid a subsidy of 15¢ on the revenue dollar for the privilege of serving their customers. Since Wright Associates data are for total income, they probably underestimate the size of SCI losses and overstate the size of SCI profits.

The third quarter loss virtually wiped out the modest total operating profits that the 16 firms made in the first and second quarters -- respectively, 8.5% and 5.9%. For the first nine months of 1969, profits for this group of large member firms was a minuscule 1.1% of gross income (before reserves, interest on capital and income taxes).

Among the 16 sample firms, only one turned a profit in the third quarter and the median firm had a 14.1% loss on gross income. The largest losses were 23.3%, 32.1%, 53.2%, and 61.5%.

The sample firms' poor 1969 profit performance reflects a relatively rapid increase in break-even points, as firms continued to add to capacity in the face of flagging volume. For example, average daily third-quarter 1969 NYSE volume was off about 5% from the year earlier figure, to 11.4 million shares a day. Over the same period, average break-even NYSE volume for the firms in the Wright Associates sample rose 32%, to 12.7 million shares daily.

Thus, what would have been a profitable volume level for the sample firms a year earlier -- 11.4 million shares traded daily on the NYSE against a break-even point of 9.6 million shares -- was completely inadequate in 1969. The gap between the 11.4 million average daily shares traded in the third quarter and the 12.7 million break-even point is reflected in the sizeable third-quarter losses, discussed above. These results graphically illustrate the industry's historic dilemma -- whether to maintain capacity high enough to comfortably handle volume upswings, thereby courtting financial difficulty, or to hold capacity close to short-term needs and risk operating difficulties.

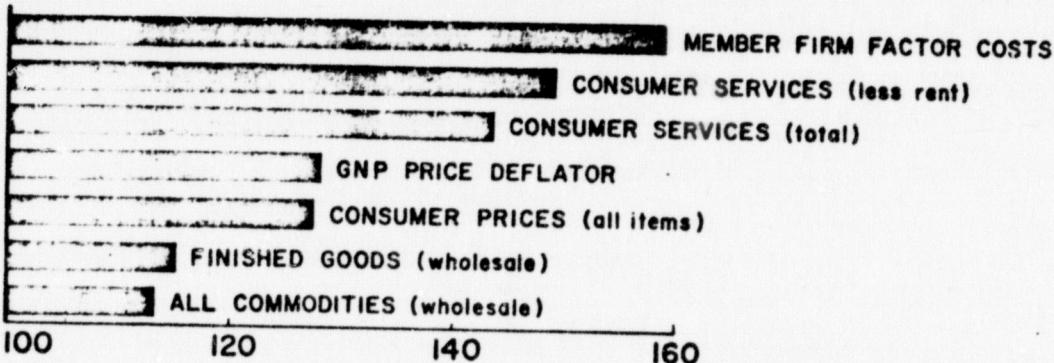
Cost Trends

Rising costs of doing business have hit the securities industry particularly hard. One reason appears to be the office boom, especially in New York City, which has intensified competition for space, employees and services. Over the period 1958-69, the weighted average of costs of goods and services purchased by NYSE member firms rose an estimated 59%. This is 4.8 times the increase in the Wholesale Price Index and about 2.2 times that in the overall Consumer Price Index. It is also well above the much publicized climb in the service component of the Consumer Price Index (44%) over the 1958-69 period.

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EXHIBIT F
CHANGES IN SELECTED PRICE INDEXES
1958-69

1958 = 100



SOURCES: Dept. of Labor & Commerce. Index of member firm costs developed by the NYSE.

A key factor in the strong rise in member firm unit costs is the wage bill. Rates for clerical workers rose, on average, 59% between 1958 and 1969. And this does not include allowance for the widespread introduction -- under competitive labor market conditions -- of new, and improvements in existing, employee benefit programs (a \$150 million item in 1969). Manufacturing basic wage rates, by comparison, averaged a 49% increase.

The price of 100 square feet of rental space in 1958, purchased only 52 square feet of space in 1969. Similarly, a dollar spent on advertising in 1969 bought only 55% as much advertising as it did in 1958. The industry's extensive communication network cost 50% more to maintain than a comparable network would have cost in 1958. Comparisons of this type can be made for virtually the entire gamut of goods and services purchased by NYSE member firms, as indicated in the table below.

1969 PURCHASES OF GOODS AND SERVICES
BY NYSE MEMBER FIRMS IN 1958 PRICES

Cost Items	Estimated 1969 Expenses #*	% Increase in Unit Costs 1958/1969	1969 Expenses in 1958 Prices (Millions)
Professional Fees	\$ 83.2	79%	\$ 46.5
Market Information Services	44.0	87	23.5
Subscription to Periodicals	27.9	65	16.9
Telephone and Telegraph	150.0	50	100.0
Advertising and Sales			
Literature	65.5	82	36.0
Entertainment and Travel	70.0	40	50.0
Equipment Rental	81.1	-1	81.9
Postage, Stationery and Office Supplies	128.7	61	79.9
Clerical and Administrative			
Salaries	1,234.8	59	776.6
Other Employee Benefits	150.2	67	89.9
Rent, Heat, Light, etc.	144.2	91	75.5
Leased Wires	38.5	75	22.0
Tickers and Projectors	26.7	85	14.4
Total	\$2,244.8		\$1,413.1

WEIGHTED 1969 INDEX OF PRICES PAID BY MEMBER FIRMS, (1958 - 100) -- 159.

1969 expenses are annualized first-half data.

* Data exclude local tax costs since the complete restructuring of New York City taxes in 1966 makes comparisons with prior years impossible. Its basic thrust, however, was to raise the tax burden.

Data also exclude interest costs.

Sources: Budget data from member firm income and expense reports.

EXHIBIT F

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The lone exception is equipment rental, for which prices fell 1%. For many firms, however, the decline is illusory. It reflects adjustment for quality improvements in equipment, particularly computers -- not lower actual costs per unit.

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Commission Rates Versus Other Changes -- 1958-1969

Over the years since the last commission rate adjustment, the seemingly inexorable rise in prices of other services has received prominent monthly attention in all the media. The 49% increase in the services component (excluding rent) of the Consumer Price Index since 1958 is well known. Insurance and finance costs, alone, have risen by over one-third since the end of 1965. Over the same four-year span housekeeping and home maintenance expenses were up about one-third. Two trips to the family doctor or to the barber today cost more than three trips did in 1958.

A current vivid example of how business costs have been pushing against income is the discernible trend among real estate brokers to boost their commission rates -- despite soaring home prices, upon which the rates are based. The securities industry has had no such cushion to fall back on. Stock splits serve to hold the average price per share down, so commissions on any given size order benefit relatively little from the long-term rise in stock prices -- and in bad market years actually declines.

This is illustrated in the following table which shows the commission on a 100 share order traded at the average NYSE round-lot price for the designated year.

INCOME PER 100 SHARE TRADE BASED ON THE AVERAGE ROUND-LOT PRICE PER SHARE

<u>Year</u>	<u>Average Price Per 100 Shares</u>	<u>Commission *</u>
1958	3,390	35.95
1959	3,980	38.90
1960	3,700	37.50
1961	3,870	38.35
1962	3,800	38.00
1963	3,910	38.55
1964	3,900	38.50
1965	3,920	38.60
1966	4,360	40.80
1967	4,250	40.25
1968	4,320	40.60
1969	4,040	39.20

* 0.5% of value plus \$19.

Because of the relative stability of revenue on any given size order, it becomes increasingly difficult to break-even -- much less to make a profit -- on smaller orders. While it is true that the size of securities orders have trended upward, by far the bulk of orders continue to be for 100 shares or less. (While orders of 100 shares or less account for 70% of all orders, they account for only 21% of shares traded.) Since the larger, more profitable orders are not evenly distributed among member firms, the increase in average ticket size does relatively little to help those firms with a large retail business.

For example; taking all markets together (NYSE, Amex, O-T-C and regionals) the average commission per 100 share order in the first half of 1969 was \$30.79. This was less than half the average for all orders, \$63.13. Among the 16 large firms for which detailed data are available (23% of NYSE business), average commissions per transaction for all except two came closer to the lower figure than the higher. The average commission was \$42.60 and the range was from \$37.63 to \$50.51.

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EXHIBIT F
COMMISSION PER SECURITY AGENCY TRANSACTION
16 LARGE RETAIL FIRMS
FIRST HALF 1969

<u>Firm</u>	<u>Average Commission*</u>	<u>Firm</u>	<u>Average Commission*</u>
1	\$37.63	9	\$42.76
2	38.18	10	43.14
3	38.30	11	43.84
4	39.49	12	45.21
5	40.22	13	45.43
6	40.49	14	45.48
7	40.69	15	49.19
8	41.12	16	50.51

* Mean of averages for the first and second quarters.

Source: Wright Associates, Management Consultants, New York, N.Y.

For all NYSE member firms that had a loss on SCI business (before margin interest adjustment), the average commission earned on all transactions was \$39.69.

What If Commission Rates Moved in Step with General Price Averages?

The industry's financial plight in 1969 reflects in part, at least, the squeeze between the relatively rapid rise in member firm costs and the stability of its rate schedule.

If commission rates had drifted up each year since 1958 in step with the overall increase in the prices of consumer services (excluding rent), the relatively small annual increments would have lifted the average commission on a 100 share order on the NYSE in 1969 to \$53 -- about 50% higher than the actual \$35.45 average. How this series of changes, each small in itself, would have mounted over the 1958-69 period is illustrated in the following table.

AVERAGE COMMISSION ON 100 SHARE ORDER OF NYSE STOCK
IN 1969 IF RATES INCREASED IN STEP WITH THE
CONSUMER PRICE INDEX FOR SERVICES (EXCLUDING RENT)

1958	\$35.45
1959	36.66
1960	38.07
1961	39.00
1962	40.01
1963	40.59
1964	41.48
1965	42.54
1966	44.31
1967	46.47
1968	49.13
1969	52.89
1969 (actual first-half average)	35.45

Sources: Rates of increase based on the Consumer Price Index as reported in the following: Economic Report of the President, 1969 (p. 279) and Economic Indicators, December 1969 (p. 26).

Conclusion

Fragmentary reports of securities firms' third-quarter and fourth-quarter operating results, together with industry-wide data on first-half performance, sketch a dark financial picture of the securities industry. They emphasize the need for quick action on initiating a new commission rate schedule if the meataxe approach to economizing is to be forestalled.

At stake is no less than the industry's financial health, upon which rests its ability to meet efficiently long-term demands of both individual and institutional investors.

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SEC MEMORANDUM RE EXTENSION OF NYSE COMMISSION SURCHARGE DATED

MEMORANDUM

August 20, 1970

SUBJECT: Extension of the New York Stock Exchange Commission Surcharge

Background

The initial proposal to impose a surcharge on New York Stock Exchange commissions took the form of a proposed rule (New York Stock Exchange Rule 383) requiring members of the Exchange to charge in addition to the minimum commission, a service fee of \$15 on orders up to and including 1,000 shares with a 50 percent limit on any increase above present minimum rates.^{1/} The basis asserted by the Exchange for the surcharge was that many of its member firms were suffering large losses on both their brokerage business and on their overall operations and that some immediate financial relief was necessary.

Data provided by the Exchange showed that 10 firms which accounted for approximately 20 percent of commission income received by all members suffered losses of \$98.3 million on their commission business in 1969 and losses of \$38 million on overall activities.

^{1/} See letters of Exchange President Robert Haack to Chairman Budge dated March 13 and March 16, 1970 (Exhibit A).

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Moreover, based on January figures, these same firms appeared to be experiencing losses which, when annualized would exceed \$100 million on commission business and losses of \$54 million on overall activities in 1970. While the Exchange's selection of firms did not purport to be a representative sample of its membership, these data demonstrated clearly that a number of firms which held a substantial share of the market were sustaining continued and substantial losses.

The Commission staff was instructed to develop, on a short-term basis, more complete and more representative data on the financial condition of the Exchange's membership. For this purpose, the staff selected a sample consisting of seventeen of the largest firms engaged in serving small investors and twenty-one firms whose principal offices are located outside of New York City (so-called "regional" or "out-of-town" firms). This sample did not include institutional firms and was heavily biased toward firms handling small orders. Therefore, although the sample firms account for only 42 percent of commission revenue received by all members, they are estimated to account for approximately 55 percent of small order business.

On the basis of the data collected, it was estimated that the firms in the sample made an overall pre-tax profit of \$13.2 million in the fourth quarter of 1969 after allowance for partners' compensation. However, it was estimated that these firms suffered

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a pre-tax loss on securities commission business in this same period of \$18.1 million. Estimates were also made to determine the impact on sample firms' profitability of surcharges of \$5, \$10 and \$15. These projections were necessarily unrefined approximations in light of the absence of current transaction information ^{2/} and the need to make general untested assumptions. ^{3/}

Despite the limitations attendant to the data used, analysis of the sample firms clearly confirmed the Exchange's assertion that, in the absence of increased commission revenues from small order business, important member firms which serve the public were likely to sustain substantial losses. This analysis also showed that, if extended through a 90-day period, assuming the level of volume current at that time would continue, a surcharge of \$15 would not result in unreasonable profits.

On April 2, 1970, the Commission informed the Exchange that it would not object to the imposition of the surcharge on an interim basis for 90 days emphasizing that its continuance would require a review of the economic conditions including transaction volume levels existing at that future time. In addition, the Commission expressly predicated its non-objection upon its

^{2/} Only 1967 transaction data for the sample were available at that time. These were used after adjusting the data to reflect the lower volume levels of 1969.

^{3/} For example, it was arbitrarily assumed that one-third of the additional revenues may be passed on to the registered representative and not be available to the firm.

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expectation that the Exchange would take all steps necessary to assure that full brokerage services for small investors would be restored and on the Exchange's undertaking to assure firms would prudently employ the surcharge revenue to improve their operations and financial positions. Finally, the Commission announced its intention to monitor the operation of the surcharge.

The surcharge became effective on April 6, 1970, and was expected to expire on July 6, 1970.

Proposal for Extension of the Surcharge

Before the end of the initial 90-day period, the Exchange by letters dated June 18, and June 29, 1970,^{4/} proposed that the surcharge be extended for an additional 90 days or indefinitely until a new commission rate structure is adopted. Pointing to a continuing decrease in member firm profits, in market volume, and in average share prices, the Exchange contended that the need for extension of the surcharge is as great, if not greater, than when it was initially proposed. The American Stock Exchange, in a letter dated June 29, 1970, also stated that the financial posture of its member firms had steadily deteriorated.

^{4/} Attached as Exhibit B.

In Securities Exchange Act Release No. 8923 of July 2, 1970, the Commission announced that the Commission rate hearings would be reconvened on July 13, 1970, for the purpose of receiving evidence on the necessity of extending the surcharge. The Commission stated that it would not take action to terminate the surcharge pending its determination of the necessity of its extension but conditioned its non-objection upon the same terms and conditions imposed on initiation of the surcharge. In addition, the Commission expressly conditioned the continuation of the surcharge upon the Exchange's agreement that it would not require the Commission to proceed under Section 19(b) if the Commission should determine that the surcharge should be terminated.

Interim Surcharge Hearings

Hearings were conducted during the week of July 13 through July 17, 1970. In addition to the New York Stock Exchange, testimony was received from: the Association of Stock Exchange Firms; Patteson Branch of Branch & Co. (a NYSE member firm); Hans R. Reinisch and Evelyn Y. Davis (private investors); the Association of Investment Brokers; the National Association of Investment Clubs; Sam Skurnick (registered representative); National Investor Relations Institute; and the American Association of Securities Representatives. Summaries of this testimony are attached as Exhibit C. A number of letters were received in response to the Commission's invitation for public comment on the surcharge proposal.

Because the public did not have access to data on the financial condition of member firms, the staff requested the Exchange to place the monitoring data in the hearing record.

With the exception of the Exchange, which had collected the monitoring data, the testimony of most of the witnesses was understandably based on opinion and observation rather than factual information. In addition, since the need for the surcharge was based primarily on current business conditions, it rendered inappropriate any strong reliance on 1969 data. Consequently, the current information collected pursuant to the monitoring of the surcharge is the basis of both the Exchange's and the staff's analysis of the need for its extension.

The Monitor Program

In order to gauge the impact of the surcharge on the financial condition of member firms, the Commission and Exchange staffs developed a monitor program to collect complete and timely information relating to member organizations' income, expenses and capital. Information was collected from all Exchange firms which do a public commission business. Augmenting this, detailed data were obtained from the 50 largest firms according to their gross securities income and from 27 regional member firms selected on a national basis with

care to assure broad geographic representation. The informational requirements are set out in the materials contained in Exhibit D. Reasonably complete information for April and May was received on June 24 from the Exchange; preliminary data for June were received on August 13, 1970. The following sections report on the evidence received in the hearings and collected through the monitor program.

Firms' Revenues and Profits

Detailed revenue and profit data indicate that a large number of firms continued to suffer losses during May, the first complete month that the surcharge was in effect. Regardless of the measure of profit used, whether it be before partners' compensation for the overall business, book profit, or estimated profit from the securities commission business, anywhere from one-half to three-fourth of the firms comprising the primary sample were showing losses during April and May (Table 1). However, preliminary June data show that a combination of higher volume, reduced expenses and substantially improved trading and investment experience sharply reduced the number of firms reporting book losses from 49 to 20. In June, 39 firms lost money on securities commission business, about the same as in May. However, this figure is down from 50 in April when the surcharge was in effect for only half the month. ^{5/}

^{5/} Expenses were allocated to securities commission income using the Exchange formula which allocates those expenses which cannot be directly assigned to a given line of business on the basis of the number of securities commission transactions to total transactions. Also, for purposes of this measure of profitability, net margin interest income was not included because of the lack of data to make the calculation.

The explanation of the continued deterioration of overall profitability in April and May (in spite of the surcharge) appears to lie principally in the trading and investment parts of the business. Sources of revenue figures (table 2) indicate that the revenue from those activities and underwriting was approximately \$61 million below the monthly average for October-December, 1969. On the other hand, the revenue from commissions (including the service charge) in April, 1970 was slightly below the average for January-March, 1970 and only about \$25 million below the average for the October-December, 1969 period. Similarly, the principal explanation of the improvement in book profitability in June, 1970 results from a substantial recovery in trading and investment experience from the deterioration that occurred in the April-May, 1970 period.

As indicated in Table 2, the surcharge added approximately \$9.6 million to revenue in April, \$18.0 million in May and \$17.7 million in June, for the monitored firms. The monitored firms showed unrealized investment losses of over \$31.8 million in April and \$8.2 million in May but a profit of \$1.1 million in June. The unrealized losses, which depressed book profitability in April and May, were caused by declining stock prices.

It should be noted that stock prices dropped 24 percent as measured by the NYSE composite index between the beginning of April and the close of May 26 when the market reached its low of

the 18-month market decline. In the next six trading sessions, in heavy trading, prices recovered about two-fifths of the losses suffered in the preceding two months.

However, since the first week of June, stock prices have fluctuated narrowly, but volume conditions have worsened appreciably probably reflecting a strong seasonal tendency characteristic of July and August.

The full impact of the surcharge on the revenue of the monitored firms is first apparent in the May data. Those data show that most of the revenue goes to the large wirehouses that have a heavy concentration of small orders, but they also show that the revenue from the surcharge in many cases was not sufficient to offset reported losses.

At the hearings, New York Stock Exchange President, Robert Haack, submitted for the record a prepared statement similar to the memorandum which accompanied his June 29, 1970, letter to the Commission in which he reported on the financial experience of 74 firms.^{6/}

The firms were divided into three groups according to their average shares per order for 1969.^{7/} The 54 firms which fell in the retail category showed the greatest losses on securities commission income business ^{8/} and received the greatest share of surcharge revenue (over 90 percent).

The SCI business of the thirteen middle group firms remained profitable;

6/ The 74 firms accounted for 67 percent of the industry's total gross revenue and 65 percent of its SCI in 1969.

7/ "Retail" firms -- those with average size transactions between 1 and 399 shares. Middle group -- 400-999 shares. "Institutional" firms -- 1,000 shares or more.

8/ It should be emphasized, however, that the validity of the allocated figures reported here have been questioned and the staff cannot confirm their reliability, particularly where the data cover short periods of time.

although these firms received only 8 percent of the surcharge revenue, this amount was stated to be crucial in reversing what had been a downward trend in the profitability of their SCI business. The SCI business for the seven firms in the "institutional" group remained profitable.

Adequacy of Capital

Capital figures for the monitored firms were obtained for the six months prior to the surcharge and monthly during the continuance of the surcharge. It is apparent that in April some firms were showing book losses which, if continued, would place them in net capital violation within 1-6 months, unless capital were supplemented. The effect of the surcharge generally is to lengthen that period of time for the firms by about one month.

Although capital figures for June have not been received, the improvement in book profitability indicates some abatement of the pressure of losses on excess net capital during June. However, market conditions suggest that that relief may have been temporary.

At the hearings, Dr. Freund of the Exchange stated that the Exchange was not able to assess the impact of the surcharge on withdrawals of capital because the Exchange has no method of ascertaining what the withdrawals would have been without the surcharge. Dr. Freund believed, however, that capital withdrawals would have been more rapid in some firms absent the surcharge. It was revealed that the Exchange

did not impose any restrictions on capital withdrawal. Only 56 out of 478 firms surveyed changed their policy on capital withdrawals at the time the surcharge was instituted.

Self-Help Activities

Monitor information was also collected from 478 firms doing a public business to determine: (1) what efforts were being made to reduce costs; (2) whether size restrictions on orders were eliminated; and, (3) whether steps were being taken to limit withdrawals of capital.

Briefly the findings in this area of monitoring are: 11/

1. Salesmen's compensation -- all firms either made no change in manner of compensation (430 firms) or they removed limitations on compensation placed into effect last year (31 firms).
2. Correspondent charges -- of the firms with such relationships, 278 share the surcharge with the executing and clearing firm in the same ratio as they share the minimum commission but in 37 cases the surcharge was retained completely by the introducing firm.
3. All firms that responded indicated that no limit-

9/ Transcript, pp. 5445-5448.

10/ Exhibit E.

11/ Slight differences in total number of firms exist because replies to each question were not always responsive.

ations are in effect on small customer accounts other than those that are traditional because of the firms' type of business.

4. All firms responding assert that they charge no more than the minimum commission and the service charge. No exceptions were reported.

5. Restriction of partners' withdrawals and withdrawals of capital -- 44 firms reduced partners' compensation, 56 placed restrictions on capital withdrawals (13 made both of the above changes) and 356 made no change in previous policy.

Cost reduction activities are difficult to identify or assess. In the hearings, the Association of Stock Exchange Firms stated that some firms have cut salaries ten percent across-the-board, that a "good many" firms have reduced partners' and stockholders' remuneration and that salesmen's compensation has been "restructured" at many firms. However, as noted above, Exchange information indicates that 356 firms of the 478 surveyed reported no changes in the compensation of partners and stockholders while only 14 reported a reduction in this area. Also, of 461 firms surveyed by the Exchange, 430 firms reported no change in salesmen's compensation policy while only 31 reported any such adjustments.

Some evidence of cost cutting appeared in the June monitoring data. Clerical and administrative employees' costs in June were about \$4 million less than the April-May average and \$8 million less

than the monthly average during the first quarter (Table 3). The category of nonvariable expenses showing the largest proportionate decline in June was promotional costs which declined \$1.4 million (18 percent) from the April-May average. Communication, occupancy and equipment costs also declined somewhat from May to June. Total compensation of partners and voting stockholders in June, on the other hand, was nearly 9 percent above the April-May average.

Although the Association of Stock Exchange Firms stated in the prepared testimony that there was a concentrated effort to reduce the number of branch offices, Exchange data do not show substantial declines. While the number of branch offices at the end of July, 1970 was 41 below the April peak, it was still higher than the number reported at the end of 1969 (see Table 4). The number of registered representatives at the end of July was 1,400 below the peak of 57,704 reached in January of this year. The most substantial reduction in costs from the earlier average monthly expenditure levels was for clerical and administrative costs (see Table 3).

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Conclusion

Monitor data show that the surcharge was an important offset to declines in security commission revenues in the April-June period. Subsequent to the institution of the surcharge, a substantial further deterioration in overall profitability of Exchange members occurred in April and May but this deterioration was primarily related to the profitability status of firms' trading and investment accounts. Similarly, the substantial improvement of member firms' profitability in June was largely due to the significant increase in securities prices and the consequent improvement in trading and investment positions.

While monitoring data for July and August will not be available for some time, the recent trend of stock prices suggests that the earlier adverse situation in trading and investment accounts should not have recurred to date. Nevertheless, the substantial falloff in trading volume during this recent period indicates that there probably has been some further deterioration in Exchange profitability.



EXHIBIT H - LETTER DATED JUNE 22, 1970 FROM SEC
TO ASSOCIATION OF INVESTMENT BROKERS
SECURITIES AND EXCHANGE COMMISSION

322A

WASHINGTON, D.C. 20549

JUN 22 1970

Association of Investment Brokers
15 William Street
New York, New York 10003

Gentlemen:

This is in response to your May 19, 1970 telegram requesting that the Commission cause the New York Stock Exchange to direct all member firms to share the interim service charge on commissions with their registered representatives.

As indicated in the enclosed copy of Securities Exchange Act Release No. 8860, the Commission's non-objection to the proposed service charge was conditioned on the stock exchanges taking all steps necessary to assure that full brokerage services to small investors are restored and that transaction size and other limitations on accounts of such investors removed. The interim surcharge was considered necessary to permit full restoration of such services and to retain needed capital within the industry. We cautioned the Exchange, however, that we expected that member organizations would prudently employ the additional revenues produced by the interim surcharge to improve their operations and financial position.

The Commission has not interfered with the various compensation arrangements which firms have with their salesmen. We believe that this is a matter for determination by each firm with its registered representatives subject only to the qualification that they act prudently to improve their operations and financial condition where such action is warranted. However, as always, the Commission stands ready to receive evidence from interested persons which demonstrates, with particularity, that additional regulatory action on our part is necessary or appropriate for the protection of investors.

Sincerely,

A handwritten signature in black ink, appearing to read "Hamer H. Budge".

Hamer H. Budge
Chairman

Enclosure

EXHIBIT I - EXCERPT FROM TESTIMONY OF MR. MERRILL C.
CHAPMAN BEFORE THE SEC

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1 firms that are doing profitable doing right and what are the
2 firms that are unprofitable doing wrong? We think this is
3 the Exchange's problem to help those firms to find that answer
4 that currently don't have that answer.

5 But representing the public investor as we do, we ask
6 the question, then, should the public investor be penalized
7 by the service charge for using the facilities of a profitable
8 firm. Obviously an association of our type has a vested in-
9 terest. We readily concede that. That vested interest is we
10 participate in the commissions, which we all know.

11 We feel that the imposition of the service charge and the
12 direction by the Stock Exchange that the registered representa-
13 tive not be permitted to share in that service charge, which
14 rule was not objected to by the Securities and Exchange Com-
15 mission, is a gross injustice to the registered representative
16 who generates that commission, who services that public custo-
17 mer, constantly, and is responsible for many of the facets of
18 that business brought to the member firms.

19 MR. WOLFSON: Excuse me. I may not have understood it.

20 MR. CHAPMAN: Yes.

21 MR. WOLFSON: Did you just indicate the Commission had
22 taken a position in sharing of the surcharge?

23 MR. CHAPMAN: That is correct.

24 MR. WOLFSON: That is not correct. You of course re-

25

1 received a letter dated June 23, from the Chairman, that points
2 out the Commission has not interfered with the various com-
3 pensation arrangements which firms have with their salesmen.
4 We believe this is a matter for determination by each firm,
5 with its registered representatives.

6 There has been no prohibition or position taken by the
7 Commission or the Staff that the surcharge could or could not
8 be shared, as we indicated in this letter to you this is a
9 matter for determination by each firm with its registered
10 representatives. I want to be sure the record is correct.
11 Go ahead.

12 MR. CHAPMAN: I would say that in the letters from Mr.
13 Pollack and Mr. Budge, the Exchange, as I pointed out, did
14 make the rule --

15 MR. WOLFSON: I don't know about any Exchange ruling.
16 I'm giving you the position of the Commission and the Staff.
17 We have taken no position, we stated that it is a matter of
18 determination of each firm. I want the record to be clear
19 on that.

20 MR. COHEN: What you are saying in effect is you have
21 given the choice of participation within each member firm
22 to the member firms themselves, am I correct?

23 MR. WOLFSON: I don't want to argue the point with you.
24 I want to tell you what we said. Why don't you proceed.

25 MR. CHAPMAN: In connection with that last point,

EXHIBIT J - EXCERPT FROM TESTIMONY OF MR. SAM
CORDOVA BEFORE THE SEC

325A

1 these members? Are they exclusively registered reps?

2 A I would say 98 percent are registered reps, the other
3 two percent might be actually owners, still owners of brokerage
4 firms.

5 Q What brokerage concern, if any, are you associated
6 with?

7 A I'm associated with Unity Securities Corporation
8 in Beverly Hills, California.

9 Q Is that a member of an exchange?

10 A Yes.

11 Q What is your position with them?

12 A I am a registered representative.

13 Q How long have you been a registered representative?

14 A Going on six years now.

15 MR. WOLFSON: Before asking any further questions,

16 I would, Mr. Letzler, like to introduce into the record as
17 Commission Exhibit 292, a letter from the Commission Staff to
18 registered representatives who have written in with reference
19 to the surcharge and their request for sharing in it, simply
20 to put on the record the Commission's position or statement in
21 this regard.

22 The letter is to registered representatives who
23 happened to write in. It is from Kenneth Rosenblum, Chief of
24 the Branch of Regulations Inspections.

25 Before submitting it for the record, I just want to

1 point out in relevant part it states "The Commission has
2 not interfered with the various compensation arrangements
3 which firms have with their salesmen. We believe that this is
4 a matter for determination by each firm with its registered
5 representatives, subject only to the qualifications they act
6 prudently to improve their operations and financial conditions
7 where such action is warranted."

8 I will submit the letter for the record at this point,
9 with your permission.

10 HEARING OFFICER LETZLER: That will be Commission
11 Exhibit 292, admitted in evidence.

12 (Commission's Exhibit No. 292 was
13 marked for identification and
14 received in evidence.)

15 BY MR. WOLFSON:

16 Q May I ask, Mr. Cordova, first, you believe the \$10.
17 surcharge is necessary?

18 A Sir, we in the securities industry for approximately
19 12 years have suffered along with every other employee, every
20 other type of industry, the inflationary cost of living. Yet
21 for about 12 years we have had no increase in commission rates.
22 That in itself would not be reason enough to have a surcharge,
23 but we do feel as an adjunct to this, that the fact that the
24 market has been badly created by economic circumstances would
25 deem it necessary to do something to alleviate the problems

FORM NO. RE-1

AUGUST 15, 1963

NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

APPLICATION FOR APPROVAL OF EMPLOYMENTS
OF REGISTERED REPRESENTATIVEThis page is to be filled in by applicant firm or corporation
PLEASE TYPEWRITE INFORMATION

N. Y. STOCK EXCHANGE

FRA SEP 11 PM 14 30

JOHN HANCOCK
MEMBER FIRMS

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Do not write in this space

Category
SEP 12 1964

Complete and accurate answers to the questions listed on this application form will eliminate delay and assist the Exchange in acting expeditiously.

1. Gambera Robert James
 Last Name First Name Middle Name

2. Registered Representative
 Title or Position

3. William R. Staats & Co., Incorporated
 To be Employed By

4. Sacramento, California
 Where to be Employed—Give Location of Office

5. (a) _____

Nature of Duties

(b) Type of Registration Desired — Limited Full (check one)

(c) September 1, 1964
 Starting Date of Employment

(d) *Salary _____ per Week
 Month or (and) Commission as permitted by the rules of your
 Year

Exchange, as follows: Listed _____ per cent; Mutual Fund _____ per cent;
 other unlisted _____ per cent.

(e) If candidate is to have any percentage participation in (1) firm profits, (2) corporation profits,
 (3) branch office profits or (4) departmental profits, give details William R. Staats & Co.,
Incorporated Employees' Profit-Sharing Plan

DO NOT WRITE IN THIS SPACE

COMPENSATION O. K.		—
EXCUSE:		Further training required
Exam. required		—
Exam. scheduled		—
Exam. Grade O. K.		—
D:		Check only <i>11/16/64</i>
Investigate		—
Report Rec'd		SEP 15 1964 <i>11/16/64</i>

CLEARANCE:	Employer	
Other Depts.		
EXAM. TAKEN:	Date <i>6/14/63</i>	Grade <i>76%</i>
CHECKED:	Date <i>7/16/64</i>	By <i>John H. Hancock</i>
TYPE OF APPVL.	/	
DISAPPROVAL	—	
DATE	SEP 16 1964	
BY	<i>John H. Hancock</i>	

FILE: *recd 11/16/64* CODE: 1- Fully Reg.
 2- Ltd. Reg. Must Reclass. By _____
 3- Reclass.
 L- Conditional. Subj. to Inv.
 O- Outside Connections O.K.

TO BE COMPLETED BY PROPOSED REGISTERED REPRESENTATIVE
(Please Print or Typewrite Information)

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6. Carbera Robert James 7. 121-24-1486
First Name First Name Middle Name Social Security No.

7. 121-24-1486

Sec. Hrs. No.

8. _____

Street **City** **State**

9. (a)* _____ (b)* _____ 10. * _____
Date of Birth _____ Age _____ Male or Female _____

11. _____ Place of Birth _____ City _____ State _____ Country _____

12. (a)* _____ Marital Status _____ (b)* _____ If married, maiden name or mother's name of spouse _____

13. •Educational Institutions attended:

Name and Address	From Mo. Yr.	To Mo. Yr.	Course	Day or Evening	Did You Graduate	Degree

Associations, societies or fraternal organizations to which you belong. (Names and addresses).

The following is a complete, consecutive statement of my business history for the past ten years:

All time must be accounted for—include all self-employment, and show all residence addresses during periods of unemployment. To expedite consideration of this application, if possible attach a letter from each employer listed below, confirming the capacity in which you were employed and the dates of your employment period, and stating that you left with a clear record. If self-employed, show name or trade style under which, and addresses at which, you conducted business. If presently employed by applicant member in any capacity, show starting date of such employment and position held. (If a "transferee," list only business connections since last application filed with Exchange.)

Important: If candidate has served with the armed forces within the last 10 years, give dates, branch of service, rank or rate, identification number (if any) and type of discharge.

LIST LATEST POSITION FIRST

If more space is needed attach separate sheet

DO NOT WRITE IN THIS SPACE

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(b)*I am a citizen of _____

If naturalized citizen of U. S. A., give date, name of court and certificate number. If not a citizen of U. S. A., give place and date of entry into U. S. A.

(c) *I can read, write and speak English fluently.

THE TEN YEAR LIMIT DOES NOT APPLY TO THE FOLLOWING ITEMS THROUGH NO. 28

16. (a) Have you ever been registered as a representative of a member of the N.A.S.D. Yes No
(b) Are you presently employed by a member of the N.A.S.D. other than the present sponsor? Yes No

If "yes", give name, address and position held _____

(c) Have you taken the N.A.S.D. examination for registration? Yes No
If "yes" on what date? May 1963

(d) Are you at present engaged in any other business, either as a proprietor, partner, officer, director, trustee or employee or otherwise? Yes No

If "yes", give details, including name and address, your title or capacity, nature of business; duties, compensation received, time spent, etc.

(e) Do you currently hold an insurance or real estate license? Yes No
If "yes", give details, including states where licensed _____

17. *I am at present employed by:

(Name of employer, business address and starting date of such employment)

18. *I have been bonded by (specify bonding company, amount, and whether currently in effect) _____

Yes No
Yes No

19. (a) Have you ever been refused a bond by a surety company? Yes No
(b) Has any surety company paid out any funds on your coverage? Yes No
If answer to either (a) or (b) is "yes", attach details.

20. (a) Have you ever been a member of any stock exchange, commodity exchange, or registered association of security or commodity brokers, dealers, investment bankers or investment advisors? Yes No

If "yes", give name(s) and dates.

(b) Are you at present a member of any such exchange or registered association? Yes No
If "yes", give name(s).

21. (a) Have you ever been suspended, expelled or otherwise disciplined by any regulatory body or by any such exchange or association; or ever been refused membership therein; or ever withdrawn your application for such membership? Yes No

(b) Have you ever been associated with any organization, as a director, controlling stockholder, partner, officer, employee or other representative of a broker-dealer which has been, or a principal of which has been, suspended or expelled from any such exchange or registered association, or was refused membership therein, or withdrew an application for membership; or whose registration as a broker-dealer with the S.E.C. or any State or agency has been denied, suspended or revoked? Yes No

(c) Are you now subject to an order of the N.A.S.D., any national securities exchange or S.E.C. which revokes, suspends or denies membership or registration? Yes No

(d) Have you ever been named as a "cause" in any action mentioned in the preceding questions taken with respect to a broker-dealer? Yes No

(e) Have you ever been enjoined, temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No

(f) Have you ever been a principal or employee of any corporation, firm, or association which was enjoined temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

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22. If answer to questions 21 (a), (b), (c), (d), (e) or (f) is "yes", supply following information:

Nature of such action: Revocation _____ Expulsion _____
 Suspension _____ Injunction _____ Other _____
 Action taken by _____ Date of such action _____
 If suspended, give date of termination of suspension _____
 Name of broker-dealer subject to such order _____
 Nature of your affiliation with such broker-dealer _____

23. In your previous business connections or employment in any capacity, have transactions under your attention ever been the subject of complaint or legal proceedings? Yes No
 If "yes", give names and details.

24. Have you ever been registered or licensed to sell or deal in securities or commodities or to function as an investment advisor by any Federal or State agencies? Yes No
 If "yes", give details below.

State	Principal For Whom I Was Designated to Act	Is Registration Currently Effective
1963 California	Francis L. duPont & Co, Sacramento	No

25. Have you or any firm, corporation or association of which you have been a principal ever failed in business, made a compromise with creditors, taken advantage of the Bankruptcy Act or Exemption Law or pleaded the Statute of Limitations? Yes No
 If "yes", give names, dates, nature of action, location and disposition.

26. (a) Have you ever been arrested, summoned, arraigned or indicted for any felony of any kind, or for any misdemeanor or offense, other than minor traffic violations? (If "Yes", give details)

(b) Have you ever been convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion, misappropriation of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? (If "Yes", give details)

(c) Have you ever been associated, as a principal or employee, with any organization which has ever been, or a principal of which has ever been, convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? (If "Yes", give details)

27. Are you at present, or have you ever been, involved in any litigation or are there any unsatisfied judgments outstanding against you? If "yes", attach details.

28. Have you ever been known personally by any other name, or have you ever conducted business or carried brokerage or bank accounts in any other name than that shown in questions 1 and 6, above? If "yes", give details and dates of use.

Yes No Yes No Yes No Yes No Yes No Yes No

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30. I hereby certify that I have read and understand the foregoing statements and that each of my responses thereto is true and complete, and that the responses in any and all prior applications filed with the New York Stock Exchange were true and complete. In consideration of the New York Stock Exchange's receiving and considering this application

(a) I authorize and request any and all of my former employers and any other person to furnish to the New York Stock Exchange any information they may have concerning my character, ability, business activities and reputation, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof; and I hereby release each such employer and each such other person from any and all liability of whatever nature by reason of furnishing such information to the New York Stock Exchange.

(b) I authorize the New York Stock Exchange to make available to any prospective employer, or to any Federal, State or Municipal agency, any information it may have concerning me, and I hereby release the New York Stock Exchange from any and all liability of whatever nature by reason of furnishing such information.

(c) I agree that the decision of the New York Stock Exchange as to the results of any examinations it may require me to take will be accepted by me as final, and that I shall be subject to the penalties provided for under Rule 345(c) of the Board of Governors, as from time to time amended, if, in the opinion of the Exchange, I have

(1) violated any provision of the Constitution or of any rule adopted by the Board of Governors;
(2) violated any of my agreements with the Exchange;
(3) made any misstatements to the Exchange; or
(4) been guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Exchange, or (iii) conduct contrary to an established practice of the Exchange.

(d) I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and, if approved, I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, and by all practices of the Exchange.

31. Further, and in consideration of the New York Stock Exchange's approving this application, I submit myself to the jurisdiction of such Exchange, and I agree as follows:

(a) That I will not guarantee to my employer or to any other creditor carrying a customer's account, the payment of the debit balance in such account, without the prior written consent of the Exchange.

(b) That I will not guarantee any customer against loss in his account or in any way represent to any customer that I or my employer will guarantee the customer against such losses.

(c) That I will not take or receive, directly or indirectly, a share in the profits of any customer's account, or share in any losses sustained in any such account.

(d) That I will not make a cash or margin transaction or maintain a cash or margin account in securities or commodities, or have any direct or indirect financial interest in such a transaction or account, except with a member firm or member corporation or with a bank. I understand and agree that no such transaction may be effected and no such account may be maintained without the consent of my member, member firm or member corporation employer, and that except for Monthly Investment Plan transactions such employer must receive promptly, directly from the carrying member firm, member corporation or bank, duplicate copies of all confirmations and statements relating to such transactions or account. I further understand and agree that I shall receive no compensation for commissions or profits earned on any transaction or account in which I have a direct or indirect financial interest, except with the approval of my employer and in accordance with the rules of the Exchange.

(e) That I will not rebate, directly or indirectly, to any person, firm or corporation any part of the compensation I receive as a registered employee, and I will not pay such compensation, or any part thereof, directly or indirectly, to any person, firm or corporation, as a bonus, commission, fee or other consideration, for business sought or procured for me or for any member of the Exchange, firm or corporation registered theron.

(f) That at any time, upon the request of the Department of Member Firms, or of any Committee or other Department of the New York Stock Exchange, I will appear before such Committee or Department and give evidence upon any subject under investigation by any such Committee or Department, and that I will produce, upon request of the Exchange, all of my records or documents relative to any inquiry being made by the Exchange.

(g) I understand that any changes in compensation in any form, or additional compensation in any form, may be subject to disapproval by the New York Stock Exchange, and that I may not be compensated for business done by or through my employer after the termination of my employment, except as may be permitted by the Exchange.

(h) I agree that I will not take, accept or receive, directly or indirectly, from any person, firm, corporation or association, other than the member, member firm or member corporation with whom I am registered, compensation of any nature, as a bonus, commission, fee, gratuity or other consideration, in connection with any securities or commodities transaction or transactions, except with the prior written consent of the Exchange.

(i) I will notify the Department of Member Firms promptly if, during the tenure of my employment by the applicant member, firm or corporation herein named, I become involved in any litigation or if any judgments are found against me; or if my registration or license to sell or deal in securities or to function as an investment advisor is ever refused, suspended or revoked; or if I become enjoined, temporarily or otherwise, from selling or dealing in securities or from functioning as an investment advisor; or if I am arrested, summoned, arraigned or indicted for a criminal offense; or if I become involved in bankruptcy proceedings.

(j) I agree that any controversy between me and any member or member organization arising out of my employment or the termination of my employment by and with such member or member organization shall be settled by arbitration at the instance of any such party in accordance with the Constitution and rules then obtaining of the New York Stock Exchange.

32. (Date) Aug 25, 1964

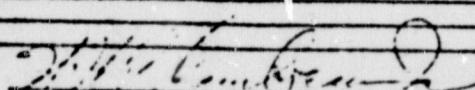


(Signature of Candidate)

33. Witness William R. Chambreau, Jr., Vice President

(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which.)

34. To the best of my knowledge and belief the candidate is familiar with the Constitution and Rules of the New York Stock Exchange and the rules governing registered representatives, and is fully qualified for the position for which application herein is made. I agree that notwithstanding the approval of the Exchange, which hereby is requested, I will not employ the candidate in the capacity stated herein without first receiving the approval of any State authority which may be required by law. I HAVE COMMUNICATED WITH THE LAST PREVIOUS EMPLOYER OF THE CANDIDATE. In addition, the following steps have been taken to verify the statements contained in this application form: (Copies of documents obtained in your investigation may be attached).


Investigation prior to employment

35. (Date) September 10, 1964

Standard signature of any instant member, general partner of applicant firm, or principal officer of applicant corporation.

W. W. Chambreau, Jr., Vice President

332A

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FORM NO. RE-1

FEBRUARY 1, 1963

NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

MEMBER FIRM

663 MAR 22 11 10 52

N.Y. STOCK EXCHANGE

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RECEIVED
MAR 22 1963
28122-36

APPLICATION FOR APPROVAL OF EMPLOYMENT
OF REGISTERED REPRESENTATIVEThis page is to be filled in by applicant firm or corporation
PLEASE TYPE OR PRINT INFORMATION

Complete and accurate answers to the questions listed on this application form will eliminate delay and assist the Exchange in acting expeditiously.

1. Gambora Robert James 2. Registered Representative
Last Name First Name Middle Name Title or Position
 3. Francis I. duPont & Co. 4. 1200 J St., Sacramento, Calif.
To be Employed By Where to be Employed—Give Location of Office
 5. (a) Servicing and solicitation of customers' accounts
Nature of Duties

(b) Type of Registration Desired — Limited Full (check one)(c) January 21, 1963
Starting Date of Employment(d) *Salary \$350 per Week or (and) Commission as permitted by the rules of your
Month YearExchange, as follows: Listed per cent; Mutual Fund per cent;
 other unlisted per cent.(e) If candidate is to have any percentage participation in (1) firm profits, (2) corporation profits,
 (3) branch office profits or (4) departmental profits, give details _____*663/22-36*

DO NOT WRITE IN THIS SPACE

PENSATION O. K.		<u>—</u>	CLEARANCE:	Employer
EXPERIENCE:	Further training required	<u>7/1/63</u>	Other Depts.	
Exam. required		<u>7/1/63</u>	EXAM. TAKEN:	Date <u>2/1/63</u> Grade <u>11</u>
Exam. scheduled		<u>7/1/63</u>	CHECKED:	Date <u>MAR 27 1963</u> By <u>✓</u>
Exam. Grade O. K.		<u>6</u>	TYPE OF APPVL.	<u>1</u>
ORD:	Check only.		DISAPPROVAL	
	Investigate	<u>✓</u>	DATE	<u>JUN 26 1963</u>
	Report Rec'd <u>6/1/63</u>	<u>✓</u>	BY	<u>✓</u>

CODE: 1 - Fully Reg.
2 - Ltd. Reg. Must Reclass. By _____

TO FILE

333A

TO BE COMPLETED BY PROPOSED REGISTERED REPRESENTATIVE
(Please Print or Typewrite Information)

6. <u>Guthora</u>	<u>Robert</u>	<u>James</u>	7. <u>121-26-1786</u>
Last Name	First Name	Middle Name	Soc. Sec. No.
<u>7100 Princeton Drive</u>		<u>Citrus Heights</u>	<u>California</u>
Home Address	Street	City	State
9. (a) <u>May 10, 1933</u>	(b) <u>29</u>	Age	10. • <u>Male</u>
Date of Birth			Male or Female
11. <u>Bronx</u>	<u>New York</u>	<u>New York</u>	<u>USA</u>
Place of Birth	City	State	Country
12. (a) <u>Married</u>	(b) <u>Glenna June Coughran</u>	If married, maiden name or maiden name of spouse	
Marital Status			

13.*Educational Institutions attended:

Name and Address	From Mo. Yr.	To Mo. Yr.	Course	Day or Evening	Did You Graduate	Degree
Hill School, Pelham, N. Y.	Jan 45	Jun 45	Elementary	Day	Yes	Diploma
Memorial High School, Pelham NY	Sept 45	Jun 51	Academic	Day	Yes	Diploma
University, Bronx, N. Y.	Sept 51	Jun 55	Marketing	Day	Yes	BS
State College, Sacto., Calif.	Sept 55		Business	Evening	No	

ist associations, societies or fraternal organizations to which you belong. (Names and addresses) -

ist associations, societies of fraternal organization,
ORDERS AND ASSOCIATIONS - Page 10

) The following is a complete, consecutive statement of my business history for the past ten years:
All time must be accounted for—include all self-employment, and show all residence addresses during periods of unemployment. To expedite consideration of this application, if possible attach a letter from each employer listed below, confirming the capacity in which you were employed and the dates of your employment period, and stating that you left with a clear record. If self-employed, show name or trade style under which, and addresses at which, you conducted business. If presently employed by applicant member in any capacity, give starting date of such employment and position held. (If a "transferee," list only business connections

Important: If candidate has served with the armed forces within the last 10 years, give dates, branch of service, rank or rate, identification number (if any) and type of discharge.

LIST LATEST POSITION FIRST

If more space is needed attach separate sheet
DO NOT WRITE IN THIS SPACE

(b) *I am a citizen of United States of America

If naturalized citizen of U. S. A., give date, name of court and certificate number. If not a citizen of U. S. A., give place and date of entry into U. S. A.

(c) *I ^{can} ~~cannot~~ read, write and speak English fluently.

THE TEN YEAR LIMIT DOES NOT APPLY TO THE FOLLOWING ITEMS THROUGH NO. 28

16. (a) Have you ever been registered as a representative of a member of the N.A.S.D.
 (b) Are you presently employed by a member of the N.A.S.D. other than the present sponsor?
 If "yes", give name, address and position held _____

Yes No

Yes No

(c) Are you at present engaged in any other business, either as a proprietor, partner, officer, director, trustee or employee or otherwise?
 If "yes", give details, including name and address, your title or capacity, nature of business, duties, compensation received, time spent, etc _____

(d) Do you currently hold an insurance or real estate license? _____
 If "yes", give details, including states where licensed _____

Yes No

Yes No

17. *I am at present employed by:
Francis L. DuPont & Co., 1200 J St., Sacramento, Calif. 1/21/63

(Name of employer, business address and starting date of such employment)

18. *I have been bonded by (specify bonding company, amount, and whether currently in effect) John Hancock Group-Binckes Bond - currently in effect

19. (a) Have you ever been refused a bond by a surety company?
 (b) Has any surety company paid out any funds on your coverage?
 If answer to either (a) or (b) is "yes", attach details.

Yes No
 Yes No

20. (a) Have you ever been a member of any stock exchange, commodity exchange, or registered association of security or commodity brokers, dealers, investment bankers or investment advisors?
 If "yes", give name(s) and dates.

Yes No

(b) Are you at present a member of any such exchange or registered association?
 If "yes", give name(s).

Yes No

21. (a) Have you ever been suspended, expelled or otherwise disciplined by any regulatory body or by any such exchange or association; or ever been refused membership therein; or ever withdrawn your application for such membership?

Yes No

(b) Have you ever been associated with any organization, as a director, controlling stockholder, partner, officer, employee or other representative of a broker-dealer, which has been, or a principal of which has been, suspended or expelled from any such exchange or registered association, or was refused membership therein, or withdrew an application for membership; or whose registration as a broker-dealer with the S.E.C. or any State or agency has been denied, suspended or revoked?

Yes No

(c) Are you now subject to an order of the N.A.S.D., any national securities exchange or S.E.C. which revokes, suspends or denies membership or registration?

Yes No

(d) Have you ever been named as a "cause" in any action mentioned in the preceding questions taken with respect to a broker-dealer?

Yes No

(e) Have you ever been enjoined, temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor?

Yes No

(f) Have you ever been a principal or employee of any corporation, firm, or association which was enjoined temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor?

Yes No

22. If answer to questions 21 (a), (b), (c), (d), (e) or (f) is "yes", supply following information:

Nature of such action: Revocation _____ Expulsion _____
 Suspension _____ Injunction _____ Other _____
 Action taken by _____ Date of such action _____
 If suspended, give date of termination of suspension _____
 Name of broker-dealer subject to such order _____
 Nature of your affiliation with such broker-dealer _____

23. In your previous business connections or employment in any capacity, have transactions under your attention ever been the subject of complaint or legal proceedings? Yes No

If "yes", give names and details.

24. Have you ever been registered or licensed to sell or deal in securities or commodities or to function as an investment advisor by any Federal or State agencies? Yes No
 If "yes", give details below.

to	State	Principal For Whom I Was Designated to Act	Is Registration Currently Effective

25. Have you or any firm, corporation or association of which you have been a principal ever failed in business, made a compromise with creditors, taken advantage of the Bankruptcy Act or Exemption Law or pleaded the Statute of Limitations? . . .
 If "yes", give names, dates, nature of action, location and disposition.

Yes No

26. (a) Have you ever been arrested, summoned, arraigned or indicted for any felony of any kind, or for any misdemeanor or offense, other than minor traffic violations? (If "Yes", give details)

Yes No

(b) Have you ever been convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion, misappropriation of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? (If "Yes", give details)

Yes No

(c) Have you ever been associated, as a principal or employee, with any organization which has ever been, or a principal of which has ever been, convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? (If "Yes", give details)

Yes No

27. Are you at present, or have you ever been, involved in any litigation or are there any unsatisfied judgments outstanding against you?
 If "yes", attach details.

Yes No

28. Have you ever been known personally by any other name, or have you ever conducted business or carried brokerage or bank accounts in any other name than that shown in questions 1 and 6, above?
 If "yes", give details and dates of use.

Yes No

29. The following is a complete list of all brokers, dealers or banks with which I am carrying accounts in securities or commodities or with which I have carried such accounts during the past 10 years (indicate in each case whether account still is open, and whether it is a cash or margin account). (If none, so state)

Holiday Inn - Orlando - Florida
 Orlando, Florida

Please give all
details requested

336A

30. I hereby certify that I have read and understand the foregoing statements and that each of my responses thereto is true and complete, and that the responses in any and all prior applications filed with the New York Stock Exchange were true and complete. In consideration of the New York Stock Exchange's receiving and considering this application

(a) I authorize and request any and all of my former employers and any other person to furnish to the New York Stock Exchange any information they may have concerning my character, ability, business activities and reputation, together with, in the case of former employers, all information concerning them and the reasons for the termination thereof, and I hereby release each such employer and each such other person from any and all liability of whatever nature by reason of furnishing such information to the New York Stock Exchange.

(b) I authorize the New York Stock Exchange to make available to any prospective employer, or to any Federal, State or Municipal agency, any information it may have concerning me, and I hereby release the New York Stock Exchange from any and all liability of whatever nature by reason of furnishing such information.

(c) I agree that the decision of the New York Stock Exchange as to the results of any examinations it may require me to take will be accepted by me as final, and that it shall be subject to the penalties prescribed under Rule 343(c) of the Board of Governors; as from time to time amended, if, in the opinion of the Exchange, I have:

- (1) violated any provision of the Constitution or of any rule adopted by the Board of Governors;
- (2) violated any of my agreements with the Exchange;
- (3) made any misstatements to the Exchange; or
- (4) been guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Exchange, or (iii) conduct contrary to an established practice of the Exchange.

(d) I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and, if approved, I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall hereafter be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, and by all practices of the Exchange.

31. Further, and in consideration of the New York Stock Exchange's approving this application, I submit myself to the jurisdiction of such Exchange, and I agree as follows:

(a) That I will not guarantee to my employer or to any other creditor carrying a customer's account, the payment of the debit balance in such account, without the prior written consent of the Exchange.

(b) That I will not guarantee any customer against losses in his account or in any way represent to any customer that I or my employer will guarantee the customer against such losses.

(c) That I will not take or receive, directly or indirectly, a share in the profits of any customer's account, or share in any losses sustained in any such account.

(d) That I will not make a cash or margin transaction or maintain a cash or margin account in securities or commodities, or have any direct or indirect financial interest in such a transaction or account, except with a member firm or member corporation or with a bank. I understand and agree that no such transaction may be effected and no such account may be maintained without the prior consent of my member, member firm or member corporation employer, and that except for Monthly Investment Transactions such employer must receive promptly, directly from the carrying member firm, member corporation or bank, duplicate copies of all confirmations and statements relating to such transactions or account. I further understand and agree that I shall receive no compensation for commissions or profits earned on any transaction or account in which I have a direct or indirect financial interest, except with the approval of my employer and in accordance with the rules of the Exchange.

(e) That I will not rebate, directly or indirectly, to any person, firm or corporation any part of the compensation I receive as a registered employee, and I will not pay such compensation, or any part thereof, directly or indirectly, to any person, firm or corporation as a bonus, commission, fee, gratuity, or other consideration, for business sought or procured for me or for any member of the Exchange, firm or corporation registered therein.

(f) That at any time, upon the request of the Department of Member Firms, or of any Committee or other Department of the New York Stock Exchange, I will appear before such Committee or Department and give evidence upon any subject under investigation by any such Committee or Department, and that I will produce, upon request of the Exchange, all of my records or documents relating to any inquiry being made by the Exchange.

(g) I understand that any changes in compensation, in form or additional compensation in any form, may be subject to disapproval by the New York Stock Exchange, and that I may not be compensated for business done by or through my employer after the termination of my employment, except as may be permitted by the Exchange.

(h) I agree that I will not take, accept or receive, directly or indirectly, from any person, firm, corporation or association, other than the member, member firm or member corporation with whom I am registered, compensation of any nature, as a bonus, commission, fee, gratuity, or other consideration, in connection with any securities or commodities transaction or transactions, except with the prior written consent of the Exchange.

(i) I will notify the Department of Member Firms promptly if, during the tenure of my employment by the applicant member, firm or corporation herein named, I become involved in any litigation or if any judgments are found against me; or if my registration or license is lost or discontinued or to function as an investment advisor is ever refused, suspended or revoked; or if I become enjoined, temporarily or otherwise, from selling or dealing in securities or from functioning as an investment advisor, or if I am arrested, summoned, arraigned or indicted for a criminal offense; or if I become involved in bankruptcy proceedings.

(j) I agree that any controversy between me and any member or members organization arising out of my employment or the termination of my employment by and with such member or member organization shall be settled by arbitration at the instance of any such party in accordance with the Constitution and rules then obtaining of the New York Stock Exchange.

32. (Date) February 18 1963

K.L.A.
Witnesses of Candidate

33. Witness

(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which.)

34. To the best of my knowledge and belief the candidate is familiar with the Constitution and Rules of the New York Stock Exchange and the rules governing registered representatives, and is fully qualified for the position for which application herein is made. I agree that notwithstanding the approval of the Exchange, which hereby is requested, I will not employ the candidate in the capacity stated herein without first receiving the approval of any State authority which may be required by law. I HAVE COMMUNICATED WITH THE LAST PREVIOUS EMPLOYER OF THE CANDIDATE. In addition, the following steps have been taken to verify the statements contained in this application form. (Copies of documents obtained in your investigation may be attached).

35. (Date) 2/25/63

Check one or more boxes indicating the sources of information used in your investigation. If none apply, leave blank.

NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

This page to be filled in by applicant employer organization

PLEASE TYPEWRITE INFORMATION

If application is incomplete it may be returned.

1. Gambera, Robert James
 Last Name First Name Middle Name

2. Account Executive 8-14-69
 Starting Date of Employment

3. Walston & Co., Inc.
 To be Employed By

4. 455 Capitol Mall
Sacramento, California 95814
 Location of Office Candidate is to be Assigned

5. (a) Soliciting of commission business and sale of unlisted securities.
 Title or Position

Nature of Primary Duties
 (Sales, Supervisory, Administrative, Back Office, etc.)

6. Type of Approval Requested

(a) Registered Representative—Rule 345(a), Full Registration Limited Registration

(b) Supervisory Person—Rule 342(d) (c) Supervisory Analyst—Rule 344

(d) Corporate Officer (Not a Holder of Voting Stock)—Rule 320
 (Check a, b or c also if applicable)

7. Compensation

(a) Salary \$ _____ per _____

(b) Commission on listed _____ %, unlisted _____ %, mutual fund _____ %

(c) Other. If candidate is to participate in profits of the employer organization or any office, department of affiliate or subsidiary corporation, give details here.

Complete and accurate answers to the questions listed on this application form will eliminate delay and assist the Exchange in acting expeditiously.

All time must be accounted for in question 14(a) including all self-employment, and showing all residence addresses during periods of unemployment. To expedite consideration of this application, if possible attach a letter from each employer listed confirming the capacity in which candidate was employed, the dates of employment, and conditions under which he left. If self-employed, indicate name or trade style, and all addresses at which candidate conducted business. Supply names and addresses of references for any period of self-employment, also unemployments of 6 months and over. If previous employer is out of business please indicate, and supply names and addresses of references to be contacted for verification.

Important: If candidate has served with the U. S. armed forces within the last 10 years, give dates, branch of service, rank or rate, identification number (if any) and type of discharge. A copy of the Discharge Papers (DD214) may also be attached.

Insert Carbon When Completing Next Page

TO BE COMPLETED BY CANDIDATE
(Please Typewrite Information)

338A

Mr. <input checked="" type="checkbox"/>	Mrs. <input type="checkbox"/>	8. Miss <input type="checkbox"/>	<u>Gembera</u> , <u>Robert</u> <u>James</u>	<u>Last Name</u>	<u>First Name</u>	<u>Middle Name</u>	9. <u>121-26-1486'</u>	<u>Soc. Sec. No.</u>	
10. <u>7227 Minuet Way, Citrus Heights, California 95610</u>						<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
Home Address									
11. (a) <u>5/19/33</u>		Date of Birth	(b) <u>36</u>	Age	(c) <u>New York, New York</u>	Place of Birth	(d) <u>U.S.A.</u>	Citizen of U. S. (Yes or No)	
12. (a) <u>Married</u>		Marital Status	(b) <u>Glenna J. Couchran</u>	If married, maiden name or maiden name of spouse	(c) _____		<u>Alias (if any)</u>		
(d) <u>Mary Elizabeth Roach</u>		Mother's Full Maiden Name	(e) <u>Alfred John Gembera</u>				Father's Full Name		

National Institutions attended:

Name and Address	From Mo.	From Yr.	To Mo.	To Yr.	Course/Major	Day or Evening	Did You Graduate	Degree
University New York	9/51		6/55		Marketing Philosophy	Day	Yes	B.S.
Memorial High School New York	9/45		6/51		Academic General	Day	Yes	
8 New York	1/44		6/44		Grammer	Day		
Hill Manor, New York	9/44		6/45		General Grammer	Day	Yes	

The following is a complete, consecutive statement of my business history for the past ten years:
(See instructions at bottom of first page)

Home addresses for past ten years if different from Question 10.

To	Address	From	To	Address
7/68	7100 Raintree Drive, Citrus Heights, California			
Present	7227 Ninuet Way, Citrus Heights, California			

The following is a complete list of all brokers, dealers or banks with which I am carrying accounts in securities or commodities or with which I have carried such during the past ten years. If none so state.

(All accounts with non-member securities firms must be closed.)

(All accounts with non-interest bearing credit)					
Name and Address of Firm or Bank	Account Number	Cash or Margin	From To	Open or Closed	
e. Forgan Wm. R. Staats & Co.	71-250181-17	Cash & Mgn	9/64 - 8/69	Open	
cis I. DuPont & Co., Inc.	71-250181-17	Cash	6/63 - 9/64	Closed	
ll, Lynch & Co.	71-250181-17	Cash	6/62 - 1/63	Closed	

If more space is needed for any of the above questions, attach separate sheet in duplicate.

TO BE COMPLETED BY CANDIDATE
(Please Typewrite Information)

DO NOT DETACH

339A

Mr.

Mrs.

8. Miss Gambera, Robert James

Last Name

First Name

Middle Name

9. 121-26-1486

Soc. Sec. No.

10. 7227 Minuet Way, Citrus Heights, California 95610

Home Address

Street

City

State

Zip Code

11. (a) 5/19/33

Date of Birth

(b) 36

Age

(c) New York, New York

(d) U.S.A.

Citizen of U. S. (Yes or No)

12. (a) Married

Marital Status

(b) Glenna J. Couchran

(c)

Alias (if any)

(d) Mary Elizabeth Roach

Mother's Full Maiden Name

Father's Full Name

Educational Institutions attended:

Name and Address	From Mo.	To Yr.	From Mo.	To Yr.	Course/Major	Day or Evening	Did You Graduate	Degree
ardham University onx, New York	9/51	6/55			Marketing Philosophy Day		Yes	B.S.
lham Memorial High School lham, New York	9/45	6/51			Academic	Day	Yes	
S. 68					General			
onx, New York	1/44	6/44			Grammer	Day		
ospect Hill					General			
lham Manor, New York	9/44	6/45			Grammer			

(a) The following is a complete, consecutive statement of my business history for the past ten years:
(See instructions at bottom of first page)

From Month Year	To Month Year	Name of Employer Address (Street, City and State)	Position Held	Reason For Leaving
54	8/69	Glore Forgan Wm. R. Staats 901 H Street, Sacramento, California	Account Executive	Conditions of Firm
63	9/64	Francis I. DuPont & Co., Inc. 1010 J Street, Sacramento, California	Account Executive	To Accept Better Offer
66	1/63	U.S.A.F. McClellan A.F.B., California	U.S.A.F. Officer	To Enter Brokerage Business

(b) Home addresses for past ten years if different from Question 10.

From	To	Address	From	To	Address
68	Present	7227 Minuet Way, Citrus Heights, California			
59	7/68	7100 Raintree Dr., Citrus Heights, California			

The following is a complete list of all brokers, dealers or banks with which I am carrying accounts in securities or commodities or with which I have carried such during the past ten years. If none so state.

(All accounts with non-member securities firms must be closed)

Name and Address of Firm or Bank	Account Number	Cash or Margin	From, To Date	Open or Closed
Glore Forgan Wm. R. Staats, Inc.	71-12081	Cash & Mgn.	9/64 - 8/69	Open
Francis I. DuPont & Co., Inc.	71-12081-77	Cash	6/63 - 9/64	Closed
Brill, Lynch & Co.	71-12081-77	Cash	6/62 - 1/63	Closed

If more space is needed for any of the above questions, attach separate sheet in duplicate.

340A

**THE TEN YEAR LIMIT DOES NOT APPLY TO THE
FOLLOWING ITEMS THROUGH NO. 29**

16. (a) Have you ever been registered as a representative of a member of the N.A.S.D.? Yes No
 (b) Are you presently employed by a member of the N.A.S.D. other than the present sponsor? Yes No
 If "yes", give name, address and position held _____

(c) Have you taken the N.A.S.D. examination for registration? Yes No
 If "yes", on what date? 3/63 Grade: B

17. (a) Are you at present engaged in any other business, either as a proprietor, partner, officer, director, trustee, employee or otherwise? Yes No
 If "yes", give details, including name and address, your title or capacity, nature of business, duties, compensation received, time spent, etc.

(b) Do you currently hold an insurance license? Yes No
 If "yes", give state(s) where licensed _____

(c) Do you currently hold a real estate license? Yes No
 If "yes", give state(s) where licensed _____

18. I am at present employed by: 8/14/69
Walston & Co., Inc., 455 Capitol Mall, Sacramento, California
(Name of employer, business address and starting date of such employment)
95814

19. I have been bonded by (specify bonding company, amount, and whether currently in effect) Currently the Fidelity & Casualty Co. of New York.

20. (a) Have you ever been refused a bond by a surety company? Yes No
 (b) Has any surety company paid out any funds on your coverage? Yes No
 If answer to either (a) or (b) is "yes", attach details.

21. (a) Have you ever been a member of any stock exchange, commodity exchange, or registered association of security or commodity brokers, dealers, investment bankers or investment advisors? Yes No
 If "yes", give name(s) and dates.

(b) Are you at present a member of any such exchange or registered association? Yes No
 If "yes", give name(s).

22. (a) Have you ever been suspended, expelled, fined, censured or otherwise disciplined by any regulatory body or by any exchange or association; or ever been refused membership therein; or ever withdrawn your application for such membership? Yes No
 (b) Have you ever been associated with any organization, as a director, controlling stockholder, partner, officer, employee or other representative of a broker-dealer which has been, or a principal of which has been, suspended or expelled from any exchange or registered association, or was refused membership therein, or withdrew an application for membership; or whose registration as a broker-dealer with the S.E.C. or any State or agency has been denied, suspended or revoked? Yes No
 (c) Are you now subject to an order of the N.A.S.D., any national securities exchange or S.E.C. which revokes, suspends or denies membership or registration? Yes No
 (d) Have you ever been named as a "cause" in any action mentioned in the preceding questions taken with respect to a broker-dealer? Yes No
 (e) Have you ever been enjoined, temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No
 (f) Have you ever been a principal or employee of any corporation, firm, or association which was enjoined temporarily or otherwise from selling or dealing in securities or commodities or from functioning as an investment advisor? Yes No

23. If answer to questions 22 (a), (b), (c), (d), (e) or (f) is "yes", supply following information:
 Nature of such action: Revocation _____ Expulsion _____
 Suspension _____ Injunction _____ Other _____
 Action taken by _____ Date of such action _____
 If suspended, give date of termination of suspension _____
 Name of broker-dealer subject to such order _____
 Nature of your affiliation with such broker-dealer _____

24. Have you ever been registered or licensed to sell or deal in securities or commodities or to function as an investment advisor by any Federal or State agencies? ... Yes No 341A
If "yes", give details below.

Employer	Federal or State Agency	From/To	Check If Currently Effective
Glore Forgan Wm. R. Staats, Inc.	California	9/64 - 8/69	No
Francis I. DuPont & Co., Inc.	California	6/63 - 9/64	No

**IF ANY OF THE FOLLOWING QUESTIONS ARE ANSWERED "YES"
ATTACH SEPARATE SHEET IN DUPLICATE WITH EXPLANATION**

25. In your previous business connections or employment in any capacity, have transactions under your attention ever been the subject of complaint or legal proceedings, or have you ever, because of dishonest or unethical acts alleged to have been committed by you, (a) been discharged or requested to resign by an employer, or (b) otherwise severed your business relation with any person? If "yes", give names, dates and other details. Yes No

26. Have you or any firm, corporation or association of which you have been a principal ever failed in business, made a compromise with creditors, taken advantage of the Bankruptcy Act or Exemption Law or pleaded the Statute of Limitations? If "yes", give names, dates, nature of action, location and disposition. Attach certificate of discharge in Bankruptcy if available. Yes No

27. (a) Have you ever been arrested, summoned, arraigned or indicted for any felony of any kind, or for any misdemeanor or offense, other than minor traffic violations? If "yes", give details, including state, court and docket number, if any. Yes No

(b) Have you ever been convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion, misappropriation of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? If "yes", give details, including state, court and docket number, if any. Yes No

(c) Have you ever been associated, as a principal or employee, with any organization which has ever been, or a principal of which has ever been, convicted of a felony of any kind, or of a misdemeanor involving embezzlement, fraudulent conversion of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer? If "yes", give details. Yes No

28. Are you at present, or have you ever been, involved in any litigation, including any suits, liens, judgments or other actions to which you have been a party, whether you appeared in court or not? If "yes", give details, including, state, court and docket number, if any. Yes No

29. Have you ever been known personally by any other name, or have you ever conducted business or carried brokerage or bank accounts in any other name than that shown in questions 1 and 8, above? Name, if "yes". Yes No

THE FOLLOWING SHOULD BE READ VERY CAREFULLY BY THE CANDIDATE

30. I hereby certify that I have read and understand the foregoing statements and that each of my responses thereto is true and complete, and that the responses in any and all prior applications filed with the New York Stock Exchange were true and complete. In consideration of the New York Stock Exchange's receiving and considering this application

(a) I authorize and request any and all of my former employers and any other person to furnish to the New York Stock Exchange any information they may have concerning my character, ability, business activities and reputation, together with, in the case of former employers, a history of my employment by them and the reason for the termination thereof; and I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the New York Stock Exchange.

(b) I authorize the New York Stock Exchange to make available to any prospective employer, or to any Federal, State or Municipal agency, any information it may have concerning me, and I hereby release the New York Stock Exchange from any and all liability of whatsoever nature by reason of furnishing such information.

(c) I agree that the decision of the New York Stock Exchange as to the results of any examinations it may require me to take will be accepted by me as final, and that I shall be subject to the penalties provided for under Rule 343 (e) of the Board of Governors, as from time to time amended, if, in the opinion of the Exchange, I have (1) violated any provision of the Constitution or of any rule adopted by the Board of Governors;

(2) violated any of my agreements with the Exchange;

(3) made any misstatements to the Exchange;

(4) been guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Exchange, or (iii) conduct contrary to sound practices of the Exchange.

(d) I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and, if approved, I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as same have been or shall be from time to time amended, and by all rules and regu-

31. Further, and in consideration of the New York Stock Exchange's approving this application, I submit myself to the jurisdiction of such Exchange, and I agree as follows: 342A

(a) That I will not guarantee to my employer or to any other creditor carrying a customer's account, the payment of the debit balance in such account, without the prior written consent of the Exchange.

(b) That I will not guarantee any customer against loss in his account or in any way represent to any customer that I or my employer will guarantee the customer against such losses.

(c) That I will not take or receive, directly or indirectly, a share in the profits of any customer's account, or share in any losses sustained in any such account.

(d) That I will not make a cash or margin transaction or maintain a cash or margin account in securities or commodities, or have any direct or indirect financial interest in such a transaction or account, except with a member organization or with a bank. I understand and agree that no such transaction may be effected and no such account may be maintained without the prior consent of my employer, and that except for Monthly Investment Plan transactions such employer must receive promptly, directly from the carrying member organization or bank, duplicate copies of all confirmations and statements relating to such transactions or account. I further understand and agree that I shall receive no compensation for commissions or profits earned on any transaction or account in which I have a direct or indirect financial interest, except with the approval of my employer and in accordance with the rules of the Exchange.

(e) That I will not rebate, directly or indirectly, to any person, firm or corporation any part of the compensation I receive as a registered employee, and I will not pay such compensation, or any part thereof, directly or indirectly, to any person, firm or corporation, as a bonus, commission, fee or other consideration, for business sought or procured for me or for any member or member organization of the Exchange.

(f) That at any time, upon the request of the Department of Member Firms, or of any Committee or other Department of the New York Stock Exchange, I will appear before such Committee or Department and give evidence upon any subject under investigation by such Committee or Department, and that I will produce, upon request of the Exchange, all of my records or documents relative to any inquiry being made by the Exchange.

(g) I understand that any changes in compensation in any form, or additional compensation in any form, may be subject to disapproval by the New York Stock Exchange, and that I may not be compensated for business done by or through my employer after the termination of my employment, except as may be permitted by the Exchange.

(h) I agree that I will not take, accept or receive, directly or indirectly, from any person, firm, corporation or association, other than my employer, compensation of any nature, as a bonus, commission, fee, gratuity or other consideration, in connection with any securities or commodities transaction or transaction, except with the prior written consent of the Exchange.

(i) I will notify the Department of Member Firms promptly if, during the tenure of my employment, I become involved in any litigation or if any judgments are found against me; or if my registration or license to sell or deal in securities or to function as an investment advisor is ever refused, suspended or revoked; or if I become enjoined, temporarily or otherwise, from selling or dealing in securities or from functioning as an investment advisor; or if I am arrested, summoned, arraigned or indicted for a criminal offense; or if I become involved in bankruptcy proceedings.

(j) I agree that any controversy between me and any member or member organization or affiliate or subsidiary thereof arising out of my employment or the termination of my employment shall be settled by arbitration at the instance of any such party in accordance with the arbitration procedure prescribed in the Constitution and rules then obtaining of the New York Stock Exchange.

(k) If the New York Stock Exchange, during the period of 30 days immediately following termination of my employment, gives me written notice that the Exchange is making inquiry into any specified matter or matters occurring prior to termination of such employment, I agree that I will thereafter comply with any request of the Exchange for me to appear and testify, submit records, respond to written requests, attend hearings, and accept disciplinary charges or penalties with respect to the matter or matters specified in such notice in every respect in conformance with the Constitution and Rules and practices of the Exchange in the same manner and to the same extent as required to do if I had remained an employee. If I refuse to accept such written notice or, having been given such notice, refuse or fail to comply with any such request of the Exchange, I agree that such refusal or failure may, in the discretion of the Exchange, act as a bar to future Exchange approval of my employment until such time as the Exchange has completed investigation into the matter or matters specified in such notice; has determined a penalty, if any, to be imposed against me; and until the penalty, if any, has been carried out.

32. August 25, 1969 P. R. Bell
(Date) (Signature of Candidate)

33. Witness Kenneth P. Bell

(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which.)

TO BE COMPLETED BY MEMBER ORGANIZATION

34. To the best of my knowledge and belief the candidate at time of approval will be familiar with the Constitution and Rules of the New York Stock Exchange and the rules governing registered representatives, and will be fully qualified for the position for which application herein is made. I agree that notwithstanding the approval of the Exchange, which hereby is requested, I will not employ the candidate in the capacity stated herein without first receiving the approval of any state authority which may be required by law. This member organization has communicated with all the previous employers of the candidate during the past three years, as set forth below:

343A

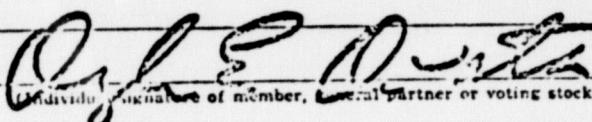
Employer	Name and Position of Person Contacted	Employed From/To	Contact by Telephone, Letter or Interview
Clore Forgan	Mr. Morgan Stoltz Manager	9/64 to 8/69	Telephone

In addition, I have taken the following steps to verify the statements contained in this application and to inquire into the past record and reputation of the candidate: (Copies of documents obtained in your investigation may be attached).

Investigation at time of employment and by a commercial agency report.

35. 10/23/69

(Date)



Douglas E. DeTata - Senior Vice President

Do not write in this space

LEPT. OF MEMBER FIRMS
1969 OCT 28 AM 11:45

EXHIBIT N
PORTION OF NYSE CONSTITUTION

344A

219 4-72

New York Stock Exchange—Constitution

1079

Withdrawal of privilege

A majority of the members of the Board present at a meeting of the Board may withdraw such privilege for any cause or without cause.

Amendments.

December 2, 1965.

March 26, 1970.

Adopted March 1, 1972.

¶ 1415 Alternates on Floor During National Emergencies

SEC. 15. The Board of Directors may, by the affirmative vote of two-thirds of the Directors present at a meeting of the Board, on the request of a member who, in time of national emergency for this country,

- (a) is on active duty in the armed forces of the United States, or
- (b) is on active duty in the armed forces of any nation or State which is then allied or associated with the United States, or
- (c) is engaged in any public service incident to the national defense, authorize a general partner of such member or a holder of voting stock in the member corporation in which such member is a holder of voting stock to transact in the place and stead of such member the usual business of such member on the Floor of the Exchange, under such terms and conditions and to such extent as the Board may prescribe. Every contract made on the Floor by any alternate shall have the same force and effect as if it had been made by the member for whom he is acting; and a member for whom an alternate is acting shall be liable to the same discipline and penalties for any act or omission of such alternate as for his own personal act or omission.

Withdrawal of privilege

The Board of Directors may, by the affirmative vote of two-thirds of the Directors present at a meeting of the Board, withdraw such privilege for any cause or without cause.

Determination of existence of national emergency

The Board of Directors shall from time to time determine whether or not a national emergency for this country exists within the contemplation of this Section and whether or not a given activity is within its provisions.

Amendment.

Adopted March 1, 1972.

ARTICLE X

**Dues and Fines—Charge on Net Commissions—Other Charges—
Penalty for Non-payment**

¶ 1451

Dues

Amount fixed by Board of Directors

SEC. 1. The dues payable by a member of the Exchange, exclusive of fines and of such other charges as may be imposed pursuant to the Constitution of the New York Stock Exchange Guide

Art. X ¶ 1451

I 080**New York Stock Exchange—Constitution**

219 4-72

tion and of contributions under Article XVI, shall be fixed by the Board of Directors from time to time and shall not exceed One Thousand Five Hundred Dollars in any calendar year.

When payable

The dues shall be payable in advance on January 1, April 1, July 1, and October 1.

The amount of each installment shall be determined by the Board of Directors at least three days before the date on which the same is payable.

Exemption to members in armed forces

The Board of Directors may, on the request of a member who, in time of national emergency for this country,

(a) is on active duty in the armed forces of the United States, or

(b) is on active duty in the armed forces of any nation or State which is then allied or associated with the United States,

and who, in the determination of the Board, is not able to avail himself of the privileges provided in either Article IX, Section 15 or Article XV, Sections 11 and 12, exempt such member from the payment of dues, under such terms and conditions and to such extent as the Board may prescribe.

Determination of existence of national emergency

The Board of Directors shall from time to time determine whether or not a national emergency for this country exists within the contemplation of this Section and whether or not a given activity is within its provisions.

Allocation of dues

The dues for each quarter may be divided by the Board into two parts, one of which shall constitute the member's contribution to the current expenses of the Exchange for the quarter, as estimated by the Board, and the other of which shall constitute the member's contribution for the quarter towards the capital investment of the Exchange, which shall include advances to its subsidiaries to cover capital expenditures.

Amendment

January 4, 1962, effective April 1, 1963.

Adopted March 1, 1972.

I 1452**Charges****On net commissions**

SEC. 2. The Board of Directors may, from time to time, fix and impose a charge upon members, member firms and member corporations, measured by their respective net commissions on transactions effected on the floor of the Exchange. Except as permitted by Sections 8, 9 and 11 of this Article, the amount of such charge with respect to any transaction shall not, in any case, exceed one per cent of the difference between the gross commission charged by the member, member firm or member corporation on account of such transaction and the commissions payable by such member, firm or corporation to other members, member firms or member corporations on

I 1452 Art. X

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New York Stock Exchange, Inc.—Constitution

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account of such transaction. Such charge shall be payable at such times and shall be collected in such manner as may be determined by the Board.

On odd lot purchase or sale

The Board of Directors may, from time to time, fix and impose a charge upon members, member firms and member corporations measured by their respective odd lot purchase and sales transactions as odd lot dealers on the floor of the Exchange. Except as permitted by Sections 8, 9 and 11 of this Article, the amount of such charge shall not exceed $\frac{1}{16}$ th of one cent per share on any odd lot purchase or sale. Such charge shall be payable at such time and shall be collected in such manner as may be determined by the Board.

Amendments.

March 29, 1956.

July 30, 1964.

Adopted March 1, 1972.

¶ 1453**Other Charges or Fees**

SEC. 3. In addition to the dues and charges provided for by Sections 1 and 2 of this Article, the Board of Directors may, from time to time, fix and impose other charges or fees to be paid to the Exchange by members, member firms and member corporations for the use of equipment or facilities or for particular services or privileges granted.

Amendment.

Adopted March 1, 1972.

¶ 1454**Dues on Transfer of Membership**

SEC. 4. When a membership is transferred, the transferee shall pay to the transferor on the date of transfer the unexpired portion of the dues for the current quarter.

Amendments.

January 4, 1962, effective April 1, 1963.

Adopted March 1, 1972.

¶ 1455**Penalty for Non-payment**

SEC. 5. A member who shall not pay his dues, or a fine, or a contribution under Article XVI, or any other sums due to the Exchange, within forty-five days after the same shall become payable shall be reported by the Treasurer to the Chairman of the Board and, after written notice mailed to him of such arrearages, may be suspended by the Board of Directors until payment is made.

Should payment not be made within one year after payment is due, the membership of the delinquent may be disposed of by the Board, on at least ten days' written notice mailed to him at his address registered with the Exchange.

Amendments.

January 4, 1962, effective April 1, 1963.

Adopted March 1, 1972.

PLAINTIFFS' INTERROGATORIES TO BROKER DEFENDANTS
UNITED STATES DISTRICT COURT **NOS. 7, 8 AND 9**
SOUTHERN DISTRICT OF NEW YORK

347A

-----X
:
L. JOHN JACOBI and EUGENE GEISZ, etc., :
Plaintiffs,
:
-against- : 70 Civ. 3152
:
BACHE & CO., INC., et al, :
Defendants.
:
-----X

PLAINTIFFS' INTERROGATORIES TO DEFENDANT

7. Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

8. State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

9. If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

**Answers to Interrogatories of
Bache & Co., Inc.**

Interrogatory 7 - Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer - As of September 1, 1969, Bache compensated Registered Representatives in its employ on a commission basis, calculated as a percentage of the gross commission received by Bache for the execution of purchases and sales of securities and commodities by each Registered Representative. The following annual commission rates were paid:

1. Listed securities, over-the-counter transactions, and commodities

\$ 1 to \$29,999	30% of Gross Commissions
\$30,000 and Over	33-1/3% of Gross Commissions
(Plus a special \$1000 check representing 3-1/3% of the first \$30,000 of gross commissions produced during a calendar year, after this level was attained)	

2. Mutual fund sales

\$ 1 to \$2,499	45% of Gross Commissions
\$2,500 and Over	50% of Gross Commissions
(Plus a special \$125 check representing 5% of the first \$2,500 of mutual funds gross commissions produced during a calendar year, after this level was attained)	

Interrogatory 8 - State whether the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer and Objection - Bache did not reduce any generally-applicable rate of compensation for registered representatives between September 1, 1969, and the date of the filing of the complaint in this action. Bache objects to inquiries concerning changes and alterations in its compensation system which either did not occur within this period or which do not constitute general reductions in commission rates such as those alleged in paragraph 18 of the complaint, because these matters are irrelevant to the subject matter of the complaint.

Furthermore, inquiries into changes and alterations in compensation not constituting the purported commission reduction alleged in the complaint call for confidential information of Bache, which is irrelevant to the action but which might perhaps be valuable to Bache's competitors.

Interrogatory 9 - If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer and Objection - Bache repeats its answer to Interrogatory 8 and objects to Interrogatory 9 on the same grounds stated for its objection to Interrogatory 8.

350A

vers to Interrogatories of
Walston & Co., Inc.

Answers t

Thomson & M

INTERROGATORIES 7, 8 and 9

Objectio

Set forth the basis of compensation, includ-
ing commission rate or salary rate, which you paid
the securities representatives (registered rep-
resentatives) employed by you as of September 1,

The essenti

system for registered

State whether the basis of compensation,
including commission rate or salary rate, which
paid to the securities representatives (regis-
representatives) employed by you was changed
in any respect subsequent to September 1,

1, 1969 is as set fo

If your answer to Interrogatory No. 8 is in
affirmative, set forth the date of each such
change or alteration, and the nature of each such
change or alteration specifying the basis of comp-
ensation, including commission rate or salary rate,
effect after said change or alteration was put
effect.

Insofar as
cerning specific ind
however, it is irrele
this action--an alle
all registered repre
tion of this nature
be valuable to Thoms

OBJECTION

ght of Walston's Answer, already before the Court,

r during the period of the alleged conspiracy
Walston reduce commission rates paid its
ties representatives. In fact, Walston has
changed commission rates paid its securities
sentatives since 1965."

Objecti

now become irrelevant. In addition, since data
quested here is confidential and thus of potential
n's competitors -- many of whom are
action -- and since these queries necessarily
erits of this proceeding, Walston objects
ground that disclosure at this time is pre-
e ability of these plaintiffs to adequately
lass, as well as their standing to sue, is
mined.

Thomson ha
of compensation for
September 1, 1969, a
in this action, eith
ferred to in Paragraph
Thomson objects to i
occurred after the c
irrelevant to the su

364A

351A

o Interrogatories of
cKinnon Achincloss, Inc.

on to Interrogatory 7

al structure of Thomson's compensation
l representatives in effect on September

rth on Schedule A attached.

Interrogatory 7 seeks information concerning individuals' salary or commission rates, relevant to the purported subject matter of a proposed uniform rate reduction applicable to registered representatives. Furthermore, detailed information has not been made public and might perhaps be of interest to Thomson's competitors.

on to Interrogatory 8

has not reduced any generally-accepted rate paid to registered representatives between the date of the filing of the Complaint and the date of the filing of the Complaint by lowering any commission rate regardless of the 18 of the Complaint or otherwise. Inquiries concerning events which have occurred since the commencement of this action as being the subject matter of the Complaint.

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SCHEDULE A

<u>Branch</u>	<u>Listed</u>	<u>Principal Not Mutual</u>	<u>O. T. C.</u>	<u>Mutual</u>
LaGrange	30%	40%	33-1/3%	50%
Chicago	33-1/3%	40%	40%	50%
South Bend	30%	40%	33-1/3%	50%
Easton	50%	50%	50%	50%
2 Broadway New York, N.Y.	40%	40%	40%	50%
46th Street New York, N.Y.	40%	40%	40%	50%
Fifth Avenue New York, N.Y.	40%	40%	40%	50%
Shelby	25%	40%	33-1/3%	50%
Oshkosh	30%	40%	33-1/3%	50%
All Other Branches	33-1/3%	40%	33-1/3%	50%

Answers to Interrogatories of
Hornblower-Weeks Hemphill, Noyes

Interrogatory No. 7

Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer to Interrogatory No. 7

As of September 1, 1969, generally applicable commission rates for individuals employed by Hornblower & Weeks-Hemphill Noyes as registered representatives on a commission compensation basis were the following:

(a) 33-1/3% credit on all agency transactions up to \$25,000 gross commissions per annum and 35%

credit on all agency transactions over \$25,000 gross commissions per annum;

(b) 40% of the sales credit on transactions in which Hornblower & Weeks-Hemphill, Noyes acted as principal;

(c) 50% credit on the allowance to dealers on transactions in mutual funds.

Credits on principal and mutual fund commissions are not counted in the \$25,000 gross commissions per annum on agency transactions. No commissions were paid on trades of \$10 or under.

There is no structured salary rate for registered representatives.

Interrogatory No. 7 is irrelevant to the purported subject matter of this action insofar as it seeks information respecting salary or commission rates for specific individual registered representatives. Moreover, information concerning such salary or commission rates has not been made public and would be of value to Hornblower & Weeks-Hemphill, Noyes competitors. To this extent Hornblower & Weeks-Hemphill, Noyes objects thereto.

Interrogatory No. 8

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer to Interrogatory No. 8

Yes.

Interrogatory No. 9

If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer to Interrogatory No. 9

On January 30, 1970, Hornblower & Weeks-Hemphill, Noyes raised its minimum commission charge on all trades, with certain exceptions, and its bond commission rate effective with trades of February 20, 1970 that were to be settled on March 1, 1970. The commissions paid for registered representatives were also changed at this time so that "commission" salesmen received credits on all confirmations carrying commissions or sales credits of \$15 or more, but did not receive credits on agency confirmations carrying commissions of less than \$15 (except on mutual fund programs where the investment created a credit in excess of \$2.00) or on principal transactions carrying sales credits of less than \$15.

On April 17, 1970, Hornblower & Weeks-Hemphill, Noyes lowered its minimum commission charges on all listed stock transactions to the New York Stock Exchange minimum commission rate and, at the same time, changed the commissions paid for "commission" salesmen so that such salesmen received credit on all confirmations carrying commissions or sales credits of \$6.00 or more. The generally applicable commission rates for individuals employed by Hornblower & Weeks-Hemphill, Noyes as registered representatives on a commission compensation basis, however, remained the same as that delineated in the answer to Interrogatory No. 7.

Interrogatory No. 9 is irrelevant to the purported subject matter of this action insofar as it seeks information

respecting changes or alterations in salary or commission rates for specific individual registered representatives, and Hornblower & Weeks-Hemphill, Noyes objects thereto. Moreover, information concerning such salary or commission rates has not been made public and would be of value to Hornblower & Weeks-Hemphill, Noyes competitors. To this extent, Hornblower & Weeks-Hemphill, Noyes objects thereto.

Answers to Interrogatories of

Loeb Rhoades & Company

INTERROGATORY 7:

Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

ANSWER:

See Exhibit 9A.

INTERROGATORY 8:

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

ANSWER:

Yes.

INTERROGATORY 9:

If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

ANSWER:

See Exhibit 9A.

EXHIBIT 9A

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**QUARTERLY BONUS SCHEDULE
30% MONTHLY PAYOUT
AS OF FEBRUARY, 1970
(Retail Salesmen)**

ANNUALIZED GROSS	Payout as of September 1, 1969 regard- less or Trade Size	\$20 to 24.99			\$25 to 29.99			\$30 to 34.99			\$35 to 39.99			\$40 to 44.99			\$45 to 49.99			\$55 and Over Pay-		
		UNDER \$20	Bonus out	Bonus out	Pay-																	
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
30,000	33.3 - 34.5	-5	Penalty	0	30	1	31	2	32	3	33	4	34	5	35	6	36	6	36	7	37	
30,000 to 39,999	35.1	-5	"	1	31	2	32	3	33	4	33	5	34	6	35	7	35	8	35	9	35	
40,000 to 49,999	36.7	-5	"	2	32	3	33	4	34	5	35	6	36	7	37	8	37	9	37	10	38	
50,000 to 64,999	36.6 - 37.0	-5	"	3	33	4	34	5	35	6	36	7	37	8	38	9	39	10	40	11	41	
65,000 to 79,999	37.6 - 39.1	-5	"	4	34	5	35	6	36	7	37	8	38	9	39	10	40	11	41	12	42	
80,000 to 99,999	40	-5	"	5	35	6	36	7	37	8	38	9	39	10	40	11	41	12	42	13	43	
100,000 to 124,999	40	-5	"	5	35	6	36	7	37	8	38	9	39	10	40	11	41	12	42	13	43	
125,000 to 149,999	40	-5	"	5	35	6	36	7	37	8	38	9	39	10	40	11	41	12	42	13	43	
150,000 and over	40	-5	"	5	35	6	36	7	37	8	38	9	39	10	40	11	41	12	42	13	43	

Mutual Funds. 50%

Syndicate Trades. 33-1/3%

Commodities 33-1/3%

Answers to Interrogatories of

Tucker, Anthony & R. L. Day

INTERROGATORY 7:

Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

OBJECTION:

The method of compensation in effect on September 1, 1969 used by Tucker, Anthony & R. L. Day for registered representatives was that a certain percentage of the gross commission on a securities transaction received by Tucker, Anthony & R. L. Day was paid to the registered representative who executed the transaction. Tucker, Anthony & R.L. Day

objects to Interrogatory 7 insofar as it seeks information concerning specific individuals' salary or commission on the grounds that this information is irrelevant to the purported subject matter of this action -- an alleged uniform rate reduction applicable to all registered representatives. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to Tucker, Anthony & R. L. Day's competitors.

INTERROGATORY 8:

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

ANSWER:

Yes.

INTERROGATORY 9:

If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

OBJECTION:

Tucker, Anthony & R. L. Day objects to Interrogatory 9 on the grounds that any present inquiry into the merits of this action is premature, since neither of the plaintiffs has yet established that he represents a proper class for the purposes of this action and because their standing to represent and sue on behalf of any

purported class may yet be found to be insufficient.

Answers to Interrogatories of
Harris, Upham & Co., Inc.

INTERROGATORY NO. 7: Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer: Harris, Upham & Co. Incorporated's compensation system for its registered representatives on September 1, 1969, was based upon both a salary and a percentage of gross commissions generated. The actual percentage will vary depending upon the type of securities involved and the geographical location of the transaction, but is normally between one-third and one-half of gross commissions generated.

INTERROGATORY NO. 8: State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer: Harris, Upham & Co. Incorporated has not reduced any generally applicable rate of compensation for registered representatives between September 1, 1969, and the present date, either by lowering any commission rate referred to in Paragraph 18 of the complaint or otherwise.

Answers to Interrogatories of

Dominick International Corp.

INTERROGATORY NO. 7

Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

OBJECTION TO INTERROGATORY NO. 7

Dominick objects to Interrogatory No. 7 because from September, 1969, and during all times germane to this action, the essential structure of Dominick's compensation system for registered representatives remained

unchanged. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to Dominick's competitors.

Dominick also objects to Interrogatory No. 7 insofar as it seeks information concerning specific individuals' salary or commission rates because it is irrelevant to the purported subject matter of this action: an alleged uniform rate reduction applicable to all registered representatives.

Dominick also objects to Interrogatory No. 7 on the ground that any present inquiry into the merits of this action is premature because the two plaintiffs' ability to represent any purported class and their individual standing to sue may yet be found insufficient.

INTERROGATORY NO. 8

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

OBJECTION TO INTERROGATORY NO. 8

Dominick has not reduced any generally-applicable rate of compensation for registered representatives from September, 1969 to the present date, either by lowering any commission rate referred to in Paragraph 18 of the complaint or otherwise. Other changes and alterations in its compensation system during this period which do not constitute reductions in any specified commission rate of compensation paid to securities repre-

sentatives are irrelevant to the subject matter of the complaint. Moreover, inquiries into changes and alterations in compensation not constituting the form of commission reduction alleged in the complaint call for confidential information of Dominick, which is irrelevant to the action but which might perhaps be valuable to Dominick's competitors.

Dominick also objects to Interrogatory No. 8 on the ground that any present inquiry into the merits of this action is premature because the two plaintiffs' ability to represent any purported class and their individual standing to sue may yet be found insufficient.

Answers to Interrogatories of
Halle & Steiglitz, Inc.

Interrogatory No. 7

The basis of compensation used by Halle & Stieglitz, Inc. as of September 1, 1968 for registered representatives was as follows:

(a) In the event that Halle & Stieglitz, Inc. acted as agent for the buyer or the seller of securities, the registered representative received 40% of the total commission on the first \$30,000, 45% of the total commission on the next \$30,000 and 50% of the total commission for sums in excess of \$60,000.

(b) In the cases where Halle & Stieglitz, Inc. acted as principal in the transaction, the registered representative received 50% of the total commissions.

Interrogatory No. 8

Yes.

Interrogatory No. 9

Effective October 1, 1969, the rates for registered representatives as specified in answer to Interrogatory No. 7 were reduced by 5% of the total commission in each instance. Halle & Stieglitz, Inc. made a determination on its own to that effect in July 1969, and notice thereof

was given to the registered representatives well in advance of October 1, 1969.

At the same time, namely, October 1, 1969, Halle & Stieglitz, Inc. established a Money Purchase Pension Plan for its registered representatives, to which Halle & Stieglitz, Inc. contributed 5% of the registered representatives' net income.

Answers to Interrogatories of
Goodbody & Co.

ANSWERS TO INTERROGATORIES 7 THROUGH 10

Compensation of Investment Executives of Goodbody on September 1, 1969 was based on the following scale:

GRADUATED COMPENSATION SCALE

DOLLAR BREAKPOINTS :	PERCENTAGE OF GROSS*		
(Gross Production)	agency transactions	principal transactions	mutual funds
\$ 0, - \$29,999	36%	42%	50%
\$ 30,000 - \$74,999	38%	44%	50%
\$ 75,000 - \$99,999	42%	50%	50%
\$100,000 - up	45%	53%	50%

* After a \$4 reduction from gross commissions for each execution of agency and principal transactions.

In addition, a new account bonus of \$33 was provided for opening each new account after the first 30, which grossed over \$100 in commissions in its first year.

No credit was given for purchase of any security selling at \$2.00 or under. In the case of securities selling over \$2.00 and under \$5.00 per share, credit was given only if the total cost of the purchase was \$2,000 or more.

Subsequent to September 1, 1969, the basis of compensation was changed as follows:

Effective February 20, 1970 the \$4.00 adjustment to the graduated compensation scale was deducted only once for each order, regardless of the number of executions needed to fill it.

Effective May 1, 1970, all restrictions on payment of commissions on orders for shares selling under \$5.00 were dropped. Restrictions on soliciting such orders and opening up new accounts for such transactions remained in effect.

On June 24, 1970 the following compensation scale was adopted:

<u>Agency Transactions</u>	<u>Principal Transactions</u>	<u>Mutual Funds</u>
30%	40%	50%

On all agency and principal orders generating commissions of less than \$20.00, the rate of compensation was 15%.

An Investment Executive grossing between \$6,000 and \$8,000 in a month received a bonus of 2% of all agency and principal business generated that month. This bonus was increased to 4% if the month's gross exceeded \$8,000.

The \$4.00 per order adjustment and the new account bonus were dropped, effective June 24, 1970. All option trades were compensated at 30% of commissions generated. Commodity transactions generating more than \$10.00 in commissions were compensated at 30%; those under \$10.00 at 15%.

Goodbody did not pay its Investment Executives any part of the interim service charge collected from its customers.

Answers to Interrogatories of
Bear, Stearns & Co.

Answers to Interrogatories 7 Through 9

On September 1, 1969 Bear, Stearns paid as compensation to its registered representatives a percentage of its own commissions, which percentage was related to the volume of brokerage commissions generated by each such representative. This commission rate was as follows:

<u>Volume of Commissions</u>	<u>Representative's Rate</u>
\$0 to \$24,999	33-1/3%
\$25,000 to \$99,999 (from first dollar)	40%
\$100,000 and over (from first dollar)	42-1/2%

In addition, a commission of 50% of Bear, Stearns' commissions was paid on secondaries, new issues, tenders,

exchanges and mutual funds. The commissions on these items were included in a representative's overall volume of commissions, as set forth above, for the sole purpose of computing the rates applicable to his other business. Commissions were not paid on transactions involving stocks whose shares traded at \$2.00 per share or less.

As of January 2, 1970, the rates were changed as follows:

<u>Volume of Commissions</u>	<u>Representative's Rate</u>
\$0 to \$24,999	30%
\$25,000 to \$49,999 (from first dollar)	36%
\$50,000 to \$84,999 (from first dollar)	38%
\$85,000 to \$99,999 (from first dollar)	40%
\$100,000 to \$149,999 (from first dollar)	41%
\$150,000 and over (from first dollar)	42%
In addition, the commission of 50% was continued to be paid on secondaries, new issues, tenders, exchanges and mutual funds, but the commissions on these items were no longer included in a representative's overall volume of commissions to compute rates applicable to other business. The rule against commissions on transactions involving stocks whose shares traded at \$2.00 or less was rescinded with respect to transactions approved by a partner of Bear, Stearns.	

Answers to Interrogatories of
Lehman Bros.

INTERROGATORY 7:

Set forth the basis of compensation, including, commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

OBJECTION:

The method of compensation in effect on September 1, 1969 used by Lehman Brothers for registered representatives was that a certain percentage of the gross commission on a securities transaction received by Lehman Brothers was paid to the registered representative who executed the transaction.

Lehman Brothers objects to Interrogatory 7 insofar as it seeks information concerning specific individuals' salary or commission rates, on the grounds that this information is irrelevant to the purported subject matter of this action -- an alleged uniform rate reduction applicable to all registered representatives. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to Lehman Brothers' competitors.

INTERROGATORY 8:

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

ANSWER:

Yes.

INTERROGATORY 9:

If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Lehman Brothers objects to Interrogatory 9 on the grounds that any present inquiry into the merits of this case is premature, since the plaintiffs have not yet established that they represent a proper class for the purposes of this action and because their standing to represent and sue on behalf of any purported class may yet be found to be insufficient.

Answers to Interrogatories of

Kidder, Peabody & Co., Inc.

Interrogatory 7 - Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer - As of September 1, 1969, Kidder, Peabody compensated most registered representatives in its employ on a commission basis, calculated as a percentage of the gross commission received by Kidder, Peabody for the execution of purchases and sales of securities by each registered representative. The following basic annual commission rates were paid, subject to individual exceptions:

<u>Customer Classification</u>	<u>Percentage of Gross Commission</u>
(a) Private Investors \$1 to \$39,999 (Securities)	30% (Plus an "override" of 3-1/3% retroactively if the \$40,000 level was attained.)
\$40,000 and Over (Securities)	33-1/3%
Mutual fund shares	50%
(b) Private Investors - West Coast Offices Agency transactions (Securities)	33-1/3%
Principal transactions (Securities)	35%
Mutual fund shares	50%
(c) Banks of deposit	10 - 20%
(d) Mutual funds, and certain institutions other than banks of deposit which maintain regular relationships with Kidder, Peabody	20%
(e) Other institutions	30% (Except the Atlanta region, 25%)

In addition, all office managers and certain other registered representatives were compensated on an individual basis.

Interrogatory 8 - State whether the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer and Objection - Kidder, Peabody did not change any generally-applicable rate of compensation for registered representatives between September 1, 1969, and the date of the filing of the complaint in this action. Kidder, Peabody objects to inquiries concerning changes and alterations in its compensation system which either did not occur within this period or which do not constitute general reductions in commission rates such as those alleged in paragraph 18 of the complaint, because these matters are irrelevant to the subject matter of the complaint.

Furthermore, inquiries into changes and alterations in compensation not constituting the purported general commission reduction alleged in the complaint call for confidential information of Kidder, Peabody, which is irrelevant to the action but which might perhaps be valuable to Kidder, Peabody's competitors.

Interrogatory 9 - If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each

such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer and Objection - Kidder, Peabody repeats its answer to Interrogatory 8 and objects to Interrogatory 9 on the same grounds stated for its objection to Interrogatory 8.

Answers to Interrogatories of
R. W. Pressprich & Co., Inc.

Answers to Interrogatories 7 Through 9

Since prior to September 1, 1969 each of Pressprich's registered representatives, except one, has been a part of a sales unit composed of a number of registered representatives

within the same office. Each office may have one or more of such units.

On September 1, 1969 Pressprich paid as compensation to its registered representatives a percentage of its own commissions which percentage was related to the volume of brokerage commissions generated by the unit of which such representatives were a part. The unit compensation was arrived at by the formulae set forth below. An individual representative's share of such compensation is set by the unit, based upon the unit leader's evaluation of an individual's participation in the unit's commissions.

A separate formula was maintained for the branches and for the New York office on September 1, 1969. Those formulae were as follows:

<u>Volume of Commissions</u>	<u>Unit's Rate</u>
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New York Office

\$0 to \$3,000,000	10%
\$3,000,001 to \$4,000,000	15%
over \$4,000,000	20%

All Branch Offices

\$0 to \$3,000,000	20%
\$3,000,001 to \$4,000,000	22-1/2%
over \$4,000,000	25%

The only change in the compensation method and formula set forth above since September 1, 1969 was that in November, 1970 the "Unit Rate" applicable to the New York office was changed to a straight 15% on all commission generated by the unit. This change resulted in an overall increase in the compensation paid to the representatives affected by units.

Answers to Interrogatories of
Dean Witter & Co., Inc.

Interrogatory 7 - Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer - As of September 1, 1969, Dean Witter compensated registered representatives in its employ on various commission bases, calculated as percentages of the gross commission received by Dean Witter for the execution of purchases and sales of securities and commodities by each registered representative, or of its profit

on trades as principal, or the profit it earns from interest charges. The following commission rates were paid in each of the four geographic regions of the country in which Dean Witter has established separate compensation schedules:

1. Northern and Southern Divisions

a. Securities and commodities transactions (except institutional clients)

\$1 to \$1,999 per month	25% of gross securities and commodities commissions
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Excess of \$2,000 per month	33-1/3% of gross securities and commodities commissions
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Excess of \$60,000 per annum	Additional 6-2/3% of gross securities and commodities commissions
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b. Interest charged on customers' debit balances

33-1/3% of interest earned above the cost of money to Dean Witter

c. Trades by Dean Witter as

40% of Dean Witter's

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2. Midwest Division

a. Securities transactions
(except institutional clients)

\$1 to \$1,999 per month 30% of gross securities commissions

Excess of \$2,000 per month 33-1/3% of gross securities commissions

Excess of \$60,000 per annum Additional 6-2/3% of gross securities commissions

b. Interest 30% of Dean Witter's profit

c. Trades as principal 40% of Dean Witter's profit

d. Commodities 33-1/3% of gross commodities commissions

3. Eastern Division

a. Securities transactions
(except institutional clients)

33-1/3% of gross securities commissions

b. Interest 33-1/3% of Dean Witter's profit

c. Trades as principal 40% of Dean Witter's profit

d. Commodities 33-1/3% of gross commodities commissions

Interrogatory 8 - State whether the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer and Objection - Dean Witter did not reduce any of the generally-applicable rates of compensation for registered representatives set forth in answer to Interrogatory 7 between September 1, 1969, and the date of the filing of the complaint in this action. Dean Witter objects to inquiries concerning changes and alterations in its compensation system which either did not occur within this period or which do not constitute general reductions in commission rates such as those alleged in paragraph 18 of the complaint, because these matters are irrelevant to the subject matter of the complaint.

Furthermore, inquiries into changes and alterations in compensation not constituting the purported commission reduction alleged in the complaint call for confidential information of Dean Witter, which is irrelevant to the action but which might perhaps be valuable to Dean Witter's competitors.

Interrogatory 9 - If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer and Objection - Dean Witter repeats its answer to Interrogatory 8 and objects to Interrogatory 9 on the same grounds stated for its objection to Interrogatory 8.

Answers to Interrogatories of

W. E. Hutton

7. Defendant W. E. Hutton & Co. objects to interrogatory 7 on the ground that the information sought is proprietary and confidential and that inquiry into the

merits at this time is premature since the ability of these plaintiffs to represent the class adequately and their standing to sue are still in doubt. Insofar as the interrogatory seeks information concerning salary or commission rates paid to specific individuals, it is irrelevant to the subject matter of this action which purports to concern an alleged uniform rate reduction applicable to all registered representatives.

8. No such change or alteration has been made in the generally applicable rate of compensation for registered representatives since September 1, 1969.

9. Not applicable.

Answers to Interrogatories of
Reynolds & Co.

Interrogatory No. 7: The essential structure of Reynolds' compensation system for registered representatives was, on September 1, 1969, and still is, based on the commission form of payment. The rate of commission paid to each registered representative varies according to the nature and quantity of the securities involved.

From the date in question, September 1, 1969, through the present, commissions paid to registered representatives on transactions involving both securities traded over-the-counter and securities traded on any of the major stock exchanges, have been at the rate of 33-1/3% of the commission paid to Reynolds by the customer.

During the same period, September 1, 1969 to date, the rate of commission paid to registered representatives on bond transactions has been 33-1/3% of the rate charged to customers on agency transactions and 40% of such rate on principal transactions.

From the date in question, September 1, 1969 through February 28, 1970, the rate of commission paid to registered representatives on put and call transactions was 40% of the rate charged to customers. Effective March 1, 1970, the rate of commission paid to registered representatives on put and call transactions was changed to 25% of the rate charged to customers.

Insofar as Interrogatory No. 7 seeks information concerning specific individuals' salary or commission rates, however, Reynolds objects for the reasons stated in its response to Interrogatory No. 5. Furthermore, detailed information of this nature has not been made public and might be valuable to Reynolds' competitors.

Interrogatory No. 8: Reynolds has not reduced any generally applicable rate of compensation for registered representatives between September 1, 1969 and the present date, except to the limited extent noted in its response to Interrogatory No. 7.

Furthermore, inquiries into changes and alterations in compensation not constituting the form of commission reduction alleged in the complaint call for confidential information of Reynolds, which is irrelevant to the action but which might perhaps be valuable to Reynolds' competitors.

Interrogatory No. 9: See the responses of Reynolds to Interrogatory No. 7 and Interrogatory No. 8.

Answers to Interrogatories of
Paine, Webber, Jackson & Curtis

Interrogatory No. 7.

Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer to Interrogatory No. 7.

As of September 1, 1969, generally applicable commission rates for individuals employed by Paine Webber as registered representatives on a commission compensation basis were the

following:

A. Offices located in Boston, Lynn, Springfield, and Worcester, Massachusetts and Providence, Rhode Island:

- (i) 33-1/3% credit on all listed transactions.
- (ii) 40% credit on all OTC agency transactions.
- (iii) 40% credit on actual or assigned gross profit on transactions in which Paine Webber acted as principal.
- (iv) 50% credit on dealer concessions on transactions in mutual funds.

When a "commission" salesman earned net \$50,000, the generally applicable commission rates became 50% on all types of business.

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B. Office located in Concord, New Hampshire:

- (i) 28-1/3% credit on all listed transactions.
- (ii) The remainder of the compensation schedule for this office is as set forth in (A.) above.

C. Offices located in New York, Hartford, Connecticut, Passaic, New Jersey and Philadelphia, Pennsylvania:

- (i) 33-1/3% credit on all listed transactions.
- (ii) 40% credit on all OTC agency transactions.
- (iii) 40% credit on actual or assigned gross profit on transactions in which Paine Webber acted as principal.
- (iv) 50% credit on dealer concessions on transactions in mutual funds.

D. Office located in Indianapolis, Indiana:

- (i) 30% credit on all listed transactions.
- (ii) 40% credit on all OTC agency transactions.
- (iii) 40% credit on actual or assigned gross profit on transactions in which Paine Webber acted as principal.
- (iv) 50% credit on dealer concessions on transactions in mutual funds.

E. Offices located in Milwaukee, Wisconsin and Grand Rapids, Michigan:

- (i) 30% credit on all listed transactions.
- (ii) 30% credit on all OTC agency transactions.
- (iii) 40% credit on actual or assigned gross profit on transactions in which Paine Webber acted as principal.
- (iv) 50% credit on dealer concessions on transactions in mutual funds.

F. Office located in Muskegon, Michigan:

- (i) 35% credit on all transactions.

G. Offices located in Chicago, Illinois and Marquette Michigan:

- (i) 33-1/3% credit on all listed transactions after deduction of a \$2.00 per transaction charge.
- (ii) 33-1/3% credit on all OTC agency transactions.
- (iii) 40% credit on actual or assigned gross profit on transactions in which Paine Webber acted as principal.
- (iv) 50% credit on dealer concessions on transactions in mutual funds.

The generally applicable commission rate on principal

transactions increased to 45% in any month if principal production for that month totalled over \$1,000, and to 50% if such production exceeded \$1500.

H G. All other offices:

(i) As to commissions from transactions on stock and commodities exchanges in which Paine Webber had membership, commissions from agency transactions in the OTC market and special fees for tenders, exchanges and other services performed: 30% credit on the first \$25,000 gross commissions per annum; 32% credit on the next \$25,000 gross commissions per annum; 34% credit on the next \$25,000 gross commissions per annum; and 36% credit on all gross commissions per annum exceeding \$75,000.

(ii) As to commissions on transactions in which Paine Webber acted as principal in corporate securities: 40% credit on actual or assigned gross profit;

(iii) As to transactions in municipal bonds:
40% credit on the gross profit.

(iv) As to transactions in mutual funds: 50% credit on gross profit;

The above compensation schedule does not apply to commission compensation on certain institutional accounts which are treated at various percentages on an individual account basis. In addition to the above compensation, each registered representative (a) was guaranteed that in the event

of total disability or incapacity due to sickness or accident, a minimum monthly income equal to the registered representatives average production compensation in the previous six months would be paid for periods up to six months, and (b) was entitled to join an employee savings plan under the terms of which Paine Webber contributed \$1.00 for every \$2.00 contributed by the registered representative up to a maximum contribution by Paine Webber of 2% of the registered representatives total compensation.

There is no structured salary rate for registered representatives.

Interrogatory No. 7 is irrelevant to the purported subject matter of this action insofar as it seeks information respecting salary or commission rates for specific individual registered representatives. Moreover, information concerning such salary or commission rates has not been made public and would be of value to Paine Webber's competitors. To this extent Paine Webber objects thereto.

Interrogatory No. 8

State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer to Interrogatory No. 8

Yes.

Interrogatory No. 9

If your answer to Interrogatory No. 8 is in the affirmative,

set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer to Interrogatory No. 9

As of January 1, 1970, all registered representatives employed by Paine Webber on a commission compensation basis were generally compensated in accordance with the commission rates described in subparagraph G of the answer to Interrogatory No. 7. Also as of January 1, 1970, a per transaction charge of \$2.00 was instituted, which sum was to be deducted from the applicable commission, gross profit or assigned profit prior to the percentage calculation of production credits, each registered representative was guaranteed a minimum monthly income equal to one-half of the registered representatives average production compensation in the previous six months for periods up to six months in the event of total disability or incapacity due to sickness or accident, and the commission rate on transactions in which Paine Webber acted as principal in corporate securities was increased so that the "commission" salesmen receive 40% credit on the first \$25,000 gross commission per annum and 50% credit on all transactions over \$25,000 gross commissions per annum.

As of April 6, 1970, the commission rate structure was changed so that:

- (i) the \$2.00 per transaction charge on all orders was eliminated.

(ii) On all agency business of 1,000 shares or less, the "commission" salesmen received an additional credit of \$7.50 added to gross commissions on orders generating commissions (before interim service charge) of \$30.00 to \$59.99, and an additional credit of \$15 added to gross commissions on orders generating commissions (before interim service charge) of \$60 or more.

As of August 10, 1970, the commission rate structure in effect prior to April 6, 1970 was reinstated with the exception that the \$2.00 per transaction charge was not reinstated.

Interrogatory No. 9 is irrelevant to the purported subject matter of this action insofar as it seeks information respecting changes or alterations in salary or commission rates for specific individual registered representatives. Moreover, information concerning such salary or commission rates has not been made public and would be of value to Paine Webber's competitors. To this extent, Paine Webber objects thereto.

Answers to Interrogatories of
Scheinman, Hochstin & Trotta, Inc.

7. Objection - The essential structure of Scheinman, Hochstin & Trotta, Incorporated's compensation system for registered representatives in effect on September 1, 1969 was the payment to said representatives of an agreed percentage of the gross commissions.

In so far as Interrogatory 7 seeks information concerning specific individuals' salary or commission rates, however, it is irrelevant to the purported subject matter of this action--an alleged uniform rate reduction applicable to all registered representatives. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to Scheinman, Hochstin & Trotta, Incorporated's competitors.

8. Objection - Scheinman, Hochstin & Trotta, Incorporated objects to Interrogatory 8 on the ground that such information is not here relevant and such an interrogatory is premature in the absence of a determination upholding the right of plaintiffs herein to represent any purported class and their individual standing to sue.

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Furthermore, inquiries into changes and alterations in compensation not constituting the form of commission reduction alleged in the complaint call for confidential information of Scheinman, Hochstin & Trotta, Incorporated, which is irrelevant to the action but which might perhaps be valuable to Scheinman, Hochstin & Trotta, Incorporated's competitors.

9. See answer to Interrogatory 8.

Answers to Interrogatories of
Newburger, Loeb & Co.

Interrogatory 7: Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Objection: The essential structure of Newburger, Loeb's compensation system for registered representatives in effect on September 1, 1969, was to pay such compensation based upon a percentage of the business done by each such registered representative.

Insofar as Interrogatory 7 seeks information concerning specific individuals' salary or commission rates, however, it is irrelevant to the purported subject matter of this action -- an alleged uniform rate reduction applicable to all registered representatives. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to Newburger, Loeb's competitors.

Interrogatory 8: State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

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Interrogatory 9: If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer: From September 1, 1969 through and including February 21, 1971 securities representatives were compensated on the following basis:

Main Office & Branches NYC

0 to 60000 -----	40%
over 60000 -----	45%

California

0 to 50000-----	35%
over 50000-----	40%

Average Ticket
Size of Ticket

Below-----	\$30	-2%
\$30 to	\$50	reg.40%
\$50 to	\$75	+2%
Over-----	\$75	+4%
0 to	\$60	reg.35%
\$60 to	\$75	+2%
Over-----	\$75	+4%

As of February 22, 1971 and thereafter compensation was on the following basis:

Eff. February 22, 1971

Average Ticket Deleted

New York - Offices

0 to 70000-----	40%
Over 70000-----	45%

Principal Business
at 45%

California

0 to 70000-----	35%
Over 70000-----	40%

Credit will not be
given if commission
~~is~~ below \$55.00

Answers to Interrogatories of
Rauscher, Pierce Securities Corp.

Interrogatory No. 7: Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Objection: Since plaintiffs have served a second amended complaint which no longer avers that defendants unlawfully combined and conspired to lower the commission rates paid to the securities representatives employed by them, Rauscher Pierce objects to Interrogatory 7 on the grounds that the information sought is wholly irrelevant and immaterial to the issues of this action and could not lead to the discovery of facts relevant and material to the issues of this action. Rauscher Pierce further objects to Interrogatory 7 on the grounds that the information sought is proprietary and confidential and would be burdensome to produce. Furthermore, Rauscher Pierce objects to Interrogatory 7 on the ground that the detailed information requested has not been made public and would be valuable to Rauscher Pierce's competitors.

Interrogatory No. 8: State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Objection: Since plaintiffs have served a second amended complaint which no longer avers that defendants unlawfully combined and conspired to lower the commission rates

paid to the securities representatives employed by them, Rauscher Pierce objects to Interrogatory 8 on the grounds that the information sought is wholly irrelevant and immaterial to the issues of this action and could not lead to the discovery of facts relevant and material to the issues of this action. Furthermore, inquiries into changes and alterations in compensation call for confidential information of Rauscher Pierce which is irrelevant to the action but which might be valuable to Rauscher Pierce's competitors.

Interrogatory No. 9: If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Objection: Rauscher Pierce objects to Interrogatory 9 on the same grounds stated for its objection to Interrogatory 7.

Answers to Interrogatories of

Oppenheimer & Co.

7. As of September 1, 1969 most of the securities representatives (registered representatives) employed by this defendant were compensated by sharing in gross commissions on their customers' securities transactions as follows:- One-third of gross commissions up to \$25,000; 40% of gross commissions from \$25,000 to \$50,000; 50% of gross commissions above \$50,000, plus bonuses of \$500.00 when gross commissions reach \$25,000 and \$30,000 and \$600.00 when gross commissions reach \$35,000. Some registered representatives were compensated by receiving 40% of gross commissions up to \$50,000 and 50% on gross commissions in excess of \$50,000.

In addition, qualified securities representatives participated in the benefits of the Oppenheimer & Co. Commissioned Employee Profit-Sharing Plan and Trust, and continued to so participate notwithstanding other changes in compensation set forth in Paragraph 9.

8. The basis of compensation paid to securities representatives (registered representatives) employed by this defendant was changed subsequent to September 1, 1969.

9. Effective January 1, 1970 substantially all securities representatives (registered representatives) employed by this defendant were compensated by sharing in

as follows:- 36% of gross commissions up to \$60,000; 40% of gross commissions from \$60,000 to \$120,000; and 44% of gross commissions of \$120,000 and over. In addition, based upon the average gross commission per order, computed quarterly, the following additions and deductions are made:-

(a) Additions:- 1% of gross commissions if commissions per order averaged \$60-80, 2% if gross commissions per order averaged \$80-100, 3% if gross commissions per order averaged \$100-150, and 4% if gross commissions averaged \$150 and over;

(b) Deductions:- 2% if gross commissions per order averaged under \$35, 1% if gross commissions per order averaged \$35-40.

No commission was credited on orders where the gross commission was under \$15. Trainees with less than two years of experience in security transactions did not incur deductions based upon the average gross commission per order and received additions based upon average gross commissions computed on a monthly basis.

Since April 1970 commission credit has been given on all orders including those where the gross commission was under \$15.

Answers to Interrogatories of
Steiner, Rouse & Co. Inc.

7. The essential structure of Steiner, Rouse & Co., Inc.'s compensation system for registered representatives in effect on September 1, 1969 was the payment to said representatives of an agreed percentage of the gross commissions. The percentage was and is 40%.

8. Steiner, Rouse & Co., Inc. has not reduced any rate of compensation for registered representatives between September 1, 1969 and the present date, either by lowering any commission rate referred to in paragraph 13 of the complaint or otherwise.

9. See answer to Interrogatory 8.

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Answers to Interrogatories of

L. F. Rothschild & Co.

7. The essential structure of L. F. Rothschild & Co.'s compensation system for registered representatives in effect on September 1, 1969 was the payment to said representatives of an agreed percentage of the gross commissions or profits of the firm on transactions introduced by the representative. The average percentage was 33-1/3%. Compensation of individual representatives varied, however, depending upon the department in which they worked, the nature of the security transactions handled by them, whether they worked individually or in groups, etc.

In so far as Interrogatory 7 seeks information concerning specific individuals' salary or commission rates, however, it is irrelevant to the purported subject matter of this action -- an alleged uniform rate reduction applicable to all registered representatives. Furthermore, detailed information of this nature has not been made public and might perhaps be valuable to L. F. Rothschild & Co.'s competitors.

8. Objection - L. F. Rothschild & Co. has not reduced any generally-applicable rate of compensation for registered representatives between September 1, 1969

and the present date, either by lowering any commission rate referred to in paragraph 18 of the complaint or otherwise. Other changes and alterations in its compensation system during this period which do not constitute reductions in any specified commission rate of compensation paid to securities representatives are irrelevant to the subject matter of the complaint.

Furthermore, inquiries into changes and alterations in compensation not constituting the form of commission reduction alleged in the complaint call for confidential information of L. F. Rothschild & Co., which is irrelevant to the action but which might perhaps be valuable to L. F. Rothschild & Co.'s competitors.

9. See answer to Interrogatory 8.

Answers to Interrogatories of
Spencer Trask & Co.

Interrogatory 7 - Set forth the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer - Objected to.

Interrogatory 8 - State whether the basis of compensation, including commission rate or salary rate, which you pay to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer - Objected to.

Interrogatory 9 - If your answer to Interrogatory 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer - Objected to.

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Answers to Interrogatories of

Smith Barney & Co., Inc.

Interrogatory 7 - Set forth the basis of compensation, including commission rate or salary rate, which you

paid to the securities representatives (registered representatives) employed by you as of September 1, 1969.

Answer - As of September 1, 1969, Smith, Barney compensated most Registered Representatives in its employ on a commission basis, calculated as a percentage of the gross commission received by Smith, Barney for the execution of purchases and sales of securities and commodities by each Registered Representative. The following basic commission rates were paid:

<u>Customer Classification</u>	<u>Percentage of Gross Commissions</u>
(a) Private investors not subscribing to Smith, Barney's Subscription Research Service or Institutional Advisory Service	33-1/3%
(b) Private investors subscribing to either of these services	25%
(c) Institutions (other than Banks of Deposit) not subscribing to either of these services	25%
(d) Institutions subscribing to either of these services	20%
(e) Private investors participating in the New York Stock Exchange Monthly Investment Plan	33-1/3%
(f) Banks of Deposit	20% (reduced by a fluctuating percentage based on the current prime rate)

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(g) Smith, Barney Equity Fund,
Inc.

(.5% of the dollar
amount invested, plus
the following per-
centages of gross com-
missions paid semi-
annually to registered
representatives whose
customers, in the
aggregate, hold 10,000
or more shares:)

<u>Customer Classification</u>	<u>Percentage of Gross Commissions</u>
(1) Commission and salaried registered representatives in a sales capacity	25%
(2) Non-sales registered representatives	20%
(h) Group sales, designated sales and private placements	20%
(i) Mutual Funds other than Smith, Barney Equity Fund	50%

In addition, registered representatives not
employed in a sales capacity who introduced a brokerage
account to Smith, Barney were eligible, under certain circum-
stances, for commissions or other compensation. Registered
representatives who brought or aided importantly in bringing
new business to Smith, Barney's Corporate Finance and
Municipal Departments were eligible to receive up to 10% of
the net profit to Smith, Barney on new corporate finance
business and up to 15% of Smith, Barney's profit resulting
from management fees on revenue bond business. Registered

representatives responsible for bringing special non-marketable situations for Smith, Barney's account to the firm's attention were eligible to receive the right to purchase up to 5% of Smith, Barney's initial investment at the firm's cost.

All of these compensation policies excluded managers and registered representatives assigned to departments or offices in which Smith, Barney's policy was to pay

only on a salary basis, such as its Institutional Department. The contribution of managers to the origination of transactions was reviewed separately and individually, while registered representatives on salary were eligible to participate in year-end profit-sharing cash distributions.

Interrogatory 8 - State whether the basis of compensation, including commission rate or salary rate, which you paid to the securities representatives (registered representatives) employed by you was changed or altered in any respect subsequent to September 1, 1969.

Answer and Objection - Smith, Barney did not change any generally-applicable rate of compensation for registered representatives between September 1, 1969, and the date of the filing of the complaint in this action. Smith, Barney objects to inquiries concerning changes and alterations in its compensation system which either did not occur within this period or which do not constitute general reductions in commission rates such as those alleged in paragraph 18 of the complaint, because these matters are irrelevant to the subject matter of the complaint.

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Furthermore, inquiries into changes and alterations in compensation not constituting the purported commission reduction alleged in the complaint call for confidential information of Smith, Barney, which is irrelevant to the action but which might perhaps be valuable to Smith, Barney's competitors.

Interrogatory 9 - If your answer to Interrogatory No. 8 is in the affirmative, set forth the date of each such change or alteration, and the nature of each such change or

alteration specifying the basis of compensation, including commission rate or salary rate, in effect after said change or alteration was put into effect.

Answer and Objection - Smith, Barney repeats its answer to Interrogatory 8 and objects to Interrogatory 9 on the same grounds stated for it: objection to Interrogatory 8.

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OPINION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
L. JOHN JACOBI and EUGENE GEISZ,
individually, on behalf of the members
of the AMERICAN ASSOCIATION OF SECURITIES
REPRESENTATIVES, and on behalf of all
other securities representatives similarly
situated,

Plaintiffs,

OPINION

-against-

BACHE & CO., INC.; WALSTON & CO., INC.;
THOMSON & MCKINNON ANCHINCLOSS, INC. (formerly
THOMSON & MCKINNON, INC.); HORNBLOWER-WEEKS,
HEMPHILL, NOYES; LOEB, RHOADES & COMPANY;
TUCKER, ANTHONY & R.L. DAY; HARRIS, UPHAM &
CO., INC.; DOMINICK INT'L. CORP.; HALLE &
STIEGLITZ, INC.; GOODBODY & CO.; BEAR, STEARNS
& CO.; LEHMAN BROS.; KIDDER PEABODY & CO., INC.;
R.W. PRESSPRICH & CO., INC.; DEAN WITTER & CO.,
INC.; W.E. HUTTON; REYNOLDS & CO.; PAINE, WEBBER,
JACKSON & CURTIS; SCHEINMAN, HOCKSTIN & TROTTA,
INC.; PRESSMAN FROHLICH & FROST, INC.;
NEWBURGER, LOEB & CO.; RAUSCHER, PIERCE
SECURITIES CORP.; OPPENHEIMER & CO.;
STEINER ROUSE & CO., INC.; L.F. ROTHSCHILD &
CO.; SPENCER TRASK & CO.; SMITH BARNEY & CO.,
INC.; and THE NEW YORK STOCK EXCHANGE, INC.,

70 Civ. 3152
R.J.W.

Defendants.

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WARD, D. J.

This is an antitrust action brought by two former registered representatives of member organizations of the New York Stock Exchange, Inc. ("the Exchange") against the Exchange and twenty-seven of its member brokerage firms ("the firms"). Plaintiffs claim to represent the class of all registered representatives employed by the firms from April 2, 1970 through July 25, 1971 who were compensated at least in part by commissions on securities transactions which they effected on the Exchange. This was the period of time during which the Exchange required that a "service charge" of \$15 or not more than 50% of the commission be added to the commission charged customers for securities transactions involving under 1,000 shares. Exchange policy, reflected in its Constitution and Rules and in its communications to the firms, required the firms to exclude the service charge from the basis upon which they calculated compensation of the registered representatives. Plaintiffs claim that the firms' concurrence with the Exchange in this policy constituted an agreement in restraint of trade in violation of §1 of the Sherman Antitrust Act, 15 U.S.C. §1. They seek treble damages under §4 of the Clayton Act, 15 U.S.C. §15, based upon the difference between their actual compensation during that time period and the amount they would have received

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had the service charge been included in the basis upon which their commissions were calculated.

For the most part the factual background of this suit is undisputed. During the aforementioned period, member organizations of the Exchange charged commissions for transactions in securities at minimum rates set forth in Article XV of the Exchange Constitution. In turn, they compensated the registered representatives who actually negotiated the transactions, primarily in the form of commissions which were a percentage of the commissions which the firms charged customers. The firms also customarily compensated their registered representatives by salary, bonuses and incentive payments. The precise systems of compensation varied from firm to firm; the percentages applied for the several types of transactions executed, reliance upon a base salary to be supplemented by commission, and incentive or bonus payments were all variable. Direct comparison of the compensation of registered representatives from firm to firm is thus difficult, but the parties do not dispute that competition was in fact intense.

During late 1969 and early 1970 the firms were experiencing a serious financial crisis, operating at increasing losses, particularly in low volume securities transactions. The minimum commission rate had last been

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increased in 1958, while costs to the industry had risen by some 60%. The Exchange had retained National Economic Research Associates ("NERA") to conduct studies and to assist in the development of a new commission rate structure, and in February of 1970 presented to the Securities and Exchange Commission ("the Commission") NERA's analysis together with its recommendation for a new rate structure. The Commission's response indicated certain unresolved issues and the need for additional data before approval of the new rates; it appeared that approval of a comprehensive new rate structure would require some time. In the meantime, the increasingly acute financial difficulties of some member firms threatened their continued operation. Advised by NERA, the Exchange recommended that the Commission approve an immediate interim charge, to be called a service charge, in the amount of \$15 per transaction but not more than 50% of the commission, to be applied to transactions of under 1,000 shares. According to the Exchange Constitution the Board of Governors could impose such a charge immediately by rule; to levy an equivalent charge by changing the commission rate required an amendment to the Exchange Constitution, which would take six to eight weeks to effect. The Commission, the Exchange, and the firms recognized that this was to be an interim measure, pending the more comprehensive adjustment in the commission rate structure. In mid-March of 1970 the

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Board of Governors approved in principle the imposition of such a service charge and submitted the proposal to the Commission. On April 2, 1970, the Commission approved the service charge for a period of 90 days, subject to review at the end of that time. and upon the conditions that services to small investors not be curtailed, that the income be used wisely for the improvement of the financial position of the member firms, and that the revenue accrue to the firm effecting the transactions. Accordingly, the Exchange did not include the service charge in the basis upon which it calculated its own charge to the firms, amounting at that time to 1% of the commissions each firm collected.

In addition, in a memorandum to the member firms announcing the imposition of the service charge, the Board of Governors of the Exchange called their attention to Article XV of the Exchange Constitution and to Rule 347(a). It stated that the service charge was not to be passed along directly to the registered representatives as part of their commission. It added, however, that the firms remained free, as always, to compensate their registered representatives according to their own individual policies. Thus, while the service charge could not be passed along directly, in effect the increased revenue could be used at least in part to compensate registered representatives if the firms so chose.

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Article XV, §1 of the Exchange Constitution
provided:

No bonus or percentage or portion of a commission, whether such commission be at or above the rates herein established, or any portion of a profit except as may be specifically permitted by the Constitution or a rule adopted by the Board of Governors, shall be given, paid or allowed, directly or indirectly, or as a salary or portion of a salary, to a clerk or person for business sought or procured for any member or allied member of the Exchange or member firm or member corporation.

Article XV, §9, which provided for service charges, contained similar language requiring that they be free of any rebate or commission unless expressly permitted by rule of the Board of Governors.

Rule 347(a) of the Rules of the Board of Governors authorized compensation to registered representatives, in the form of salary, commission, percentage of the profit of the office, or bonus. It contained no provision for compensation directly based on service charges. Thus, unless the Board of Governors were to amend Rule 347(a), the Constitution forbade directly passing along any of the service charge income to the registered representatives.

The draftsmen of the rules effectuating the service charge at one point contemplated such an amendment to Rule 347(a). A preliminary memorandum, not even officially submitted to the Board of Governors, did contain language

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to this effect. But the version considered by the Board of Governors on March 18, 1970 did not. Neither party has offered competent testimony concerning the reasons for this change. The Commission itself considered only the later draft, which contained no mention of registered representatives compensation.

At the close of the 90-day period the Commission held public hearings to review the service charge, and conditioned its continuing approval upon additional requirements. For example, it required the Exchange and member firms to treat the service charge as part of commission income for purposes of calculating "regular-way reciprocity" with non-member brokerage firms. The registered representatives had objected to the Exchange's rule prohibiting sharing of the service charge with them. The Commission replied by disclaiming any responsibility to intervene in firms' policies concerning compensation to registered representatives, unless a showing were made that such intervention was necessary for the protection of investors. The Commission then approved indefinite continuance of the service charge, reserving the right to rescind its approval at any time that should appear necessary.

The service charge remained in effect until March 24, 1972, when it was replaced by a revised commission rate

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schedule. During that time none of the member firms included the service charge in the base commission upon which they calculated the compensation due their registered representatives. Compensation practices of member firms continued to vary widely, and competition for the services of the registered representatives continued unabated. The firms retained the service charge as part of their operating revenue, and the Exchange continued to monitor the effect of the increased revenues upon their profits. The Exchange judged that while to some extent the erosion of capital and the heavy losses which had prompted the charge had been stemmed, a significant number of firms continued to sustain losses on transactions of under 1,000 shares.

The registered representatives do not contend that the service charge was unnecessary, nor dispute the importance of enacting it quickly. Their claim is that since no additional services were in fact performed, in substance it was a commission rate increase, and should have been considered such for purposes of their compensation. The Exchange's deliberate policy of excluding the service charge from the basis upon which their compensation was calculated, in which the member firms concurred by adhering to the Constitution and Rules of the Exchange, is, plaintiffs claim, a violation of the antitrust laws.

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Defendants, on cross-motions for summary judgment prior to trial, contended that the Securities and Exchange Commission had exclusive or primary jurisdiction over this matter, and that the antitrust court was therefore without jurisdiction to decide it. For the reasons which follow, this Court rejected defendants' contention, and set the matter down for a prompt trial on the merits.

In Silver v. New York Stock Exchange, 373 U.S. 341 (1963), the Supreme Court first enunciated the principles underlying the Exchange's antitrust liability, which have been further developed in a series of subsequent lower court decisions. Silver involved a non-member broker whose private wire connections with certain member firms the Exchange had unilaterally ordered disconnected, without notice or hearing. The Court observed that absent the regulatory provisions of the Securities Exchange Act of 1934 ("the Exchange Act"), 15 U.S.C. §78a et seq., the Exchange's action would have constituted a per se violation of the antitrust laws. It also noted that the Exchange Act provided no administrative review of the Exchange's action in this instance, and that therefore the antitrust court was the sole forum in which it could be judged. The Court then articulated the standards which govern the Exchange's antitrust liability. It stated that the securities laws do

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not provide the Exchange with blanket antitrust immunity, but rather act as an implied repealer of the antitrust laws only to the limited extent necessary to make the securities laws work. The Court saw its task as the reconciliation of the "antitrust aim of eliminating restraints on competition with the effective operation of a public policy contemplating that securities exchanges will engage in self-regulation which may well have anti-competitive effects in general and in specific applications."

Silver, 373 U.S. at 349.

The Court extensively reviewed the self-regulatory purposes and functions of the Exchange, as well as the supervisory role of the Commission. Briefly stated, those functions are the protection of investors, including safeguarding the financial responsibility of member firms, and insuring fair dealing in securities traded in upon the Exchange. Exchange Act §§6, 19; 15 U.S.C. §§78f, s. But the Court did not determine whether the Commission itself would have primary or exclusive jurisdiction over such questions if the Exchange's action were subject to direct Commission review.

Thill Securities Corporation v. New York Stock Exchange, 433 F.2d 264 (7th Cir. 1970), cert. den., 401 U.S. 994 (1971), addressed this question. In that case,

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plaintiff, a non-member firm, attacked the Exchange's anti-rebate rule, adopted under its self-regulatory authority and subject to review by the Commission. The Court of Appeals reversed the District Court's grant of summary judgment for the Exchange, which had been based on precisely this review jurisdiction of the Commission. It stated that there was no evidence that the Commission was exercising actual and adequate review jurisdiction over the complained-of rule. Even if it were, the Court stated, acknowledging that the Commission may properly and does in fact consider antitrust principles in exercising its review power, the Commission is not the primary body charged with enforcement of the antitrust laws. Rather, the courts are the primary repository of antitrust expertise, and primarily responsible to enforce principles of competition. The Court of Appeals remanded for factual findings concerning the importance of the rule in making the securities laws work, and its anticompetitive effect. It repeated the standard enunciated in Silver, that the task of the Court was to give effect to antitrust principles except insofar as they are necessarily modified in order to fulfill the purposes of the securities laws. In addition, it expressed serious reservations concerning the extent to which the anti-rebate rule could be considered necessary to make the securities laws work.

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More recently, in this district, Judge Lasker expressly differed with the analysis of Thill in some respects, although he did distinguish the facts of the two cases. Gordon v. New York Stock Exchange, 366 F. Supp. 1261 (S.D.N.Y. 1973), appeal docketed No. 74-1043, 2d Cir. Dec. 6, 1973, involved a challenge to inter alia the commission rate structure of the Exchange. Judge Lasker found that since the Exchange Act explicitly authorized the Exchange to fix reasonable rates of commission which are in fact actively reviewed by the Commission, the Court lacked jurisdiction over an antitrust suit against this practice.

He stated:

We believe that while Silver quite properly punctured the umbrella of anti-trust immunity claimed by the Exchange, it did not intend Congress' unique self-regulatory scheme to be totally damped by the continuous interference of an anti-trust court. We read Silver as holding that certain limited areas of Exchange regulation - such as potentially anti-competitive and arbitrary conduct directed at non-members - are properly interfered with by a reviewing court since the Act purports to regulate only the conduct of registered exchanges (and their members) with regard to the public, rather than the entire securities business. But Silver also contemplates a certain zone of anti-trust immunity in the regulatory process where there is little threat of such arbitrary and discriminatory activity. 366 F. Supp. at 1264.

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But distinguishing Thill, the Court continued:

First the Act contains no specific directive to the SEC to supervise member-non-member relations; second, there was before the court no record of active SEC supervision in the area; third, the court thought the power to refuse to share commissions with non-members was a "weapon 'that can be used to injure a particular competitor'" (p. 270) and the plaintiff had alleged that the anti-rebate rule had in fact been unevenly applied.

* * *

We must add, if it is not already clear, that if Thill is to be read as holding that an anti-trust court has concurrent jurisdiction with the SEC over all potentially anti-competitive practices and rules, we disagree.

366 F. Supp. at 1267.

Thus, there emerges the applicable rule concerning not only the jurisdiction of this Court, but also the nature of the analysis required in assessing antitrust liability of the Exchange and its members. Where the concededly self-regulatory rule or practice complained of is within the explicit mandate of the Exchange Act and also is actively reviewed by the Commission, that body may and appropriately should itself consider the policies of both the antitrust and the securities laws. But, where the Act contains no explicit directive to the Commission to supervise the practice or rule, the antitrust court may properly consider it. In so doing, it must evaluate both the policies against restraint

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of competition and the policies of investor protection and fair dealing in securities.

The case presently before this Court in fact overlaps these two spheres.

The service charge itself was a matter over which the Commission possessed and exercised direct regulatory and supervisory authority under 15 U.S.C. §78s(b). The rule concerning compensation to registered representatives, however, fell only partially within the regulatory function of the Commission. See, Merrill, Lynch, Pierce, Fenner & Smith v. Ware, 414 U.S. 117 (1973). The Commission itself, when the registered representatives protested the rule's effect, declined to intervene in matters affecting the relationship between the member firms and their employees, unless the latter could demonstrate a particular need for intervention for the protection of investors. Instead, the registered representatives have chosen to attack the rule on the ground that it violates the antitrust laws. In view of the Commission's disclaimer of primary responsibility over that aspect of the rule which the registered representatives here contest, and since the focus of the challenge here is in the sphere of the courts' particular antitrust competence, the Court exercises its concurrent jurisdiction over the controversy.

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In this connection, we need only briefly consider defendants' claim of total antitrust exemption since acts pursuant to the Exchange's Constitution and Rules constitute its exercise of self-regulatory authority, and, under §19b of the Exchange Act, are the equivalent of government action. Silver, as noted above, established that even such self-regulatory activity is not wholly immune from antitrust attack. Rather the nature of the scrutiny, whether by the Commission or the antitrust court, is altered. It is evident that self-regulatory actions taken by the Exchange may go beyond the mandate of §19b of the Exchange Act. The analysis required by Silver is an application of traditional antitrust principles of liability, except insofar as the action of the Exchange in the exercise of self-regulatory authority is found to be explicitly required by the Act or necessary to effectuate its purposes.

In order to recover in a private antitrust action under §4 of the Clayton Act, 15 U.S.C. §15, plaintiffs must establish a causal connection between the alleged antitrust violation and some injury to them. This fact of legal injury must be established with certainty, although at this stage the precise amount of damages may remain somewhat speculative. See, Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (2d Cir. 1970), cert. denied, 401 U.S. 923 (1971); Fields

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Productions, Inc. v. United Artists Corp., 318 F. Supp. 87 (S.D.N.Y. 1969), aff'd per curiam, 432 F.2d 1010 (2d Cir. 1970), cert. denied, 401 U.S. 949 (1971); Productive Inventions Inc. v. Trico Products Corp., 224 F.2d 678 (2d Cir. 1955), cert. denied, 350 U.S. 936 (1956).

Defendants contend that plaintiffs have not and cannot establish with certainty any financial loss arising from defendants' actions. They point out that the member firms at all times remained free to negotiate not only the registered representatives' rates of commission, but also all other elements of their compensation, including salary, incentive payments, and bonuses. Thus, it cannot be said with certainty either that the increased revenue was not in fact in some way reflected in the registered representatives' compensations, or conversely, that had the service charge been included in the basis upon which the registered representatives' commissions were calculated, their rates of commission would have remained constant and their actual compensation accordingly increased. Because of these uncertainties, defendants maintain, plaintiffs cannot claim to have been injured as a direct result of defendants' actions.

These considerations, however, are more relevant to calculations of the amount of damages should liability be found. Plaintiffs have shown that had the additional revenue been obtained by way of a commission rate increase rather

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than a service charge, or had Rule 347(a) been amended to permit passing it along to them, they would have been entitled to share in this increased revenue directly.

Because of defendants' actions they were not so entitled. They have therefore demonstrated sufficient legal injury causally related to the actions of defendants to permit further consideration of their claims.

Plaintiffs contend that defendants' action in refusing to pass along the service charge is a horizontal agreement analogous to price fixing and as such is illegal per se under the antitrust laws. They further contend that since the service charge was enacted in alleged violation of the Constitution of the Exchange, it cannot fall within the rules of Silver and Thill, supra, that actions taken by the Exchange pursuant to its authority to make rules, under §6 of the Exchange Act, 15 U.S.C. §78f, are not illegal per se under the antitrust laws, but rather must be examined to determine whether they are exempt from the application of the antitrust laws because necessary to make the Act work. Two interlocking questions are thus presented.

First is the question whether the manner in which the service charge was adopted precludes application of the particular analysis mandated by Silver, supra, for cases involving a conflict between the securities laws and

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the antitrust laws. If not, the Court will consider the policies of the securities laws as well as of the antitrust laws in determining liability. The second question is whether under a strict antitrust analysis, prior to any consideration of harmony with the securities laws, the action taken by defendants can be considered a per se violation. If it is not, then the Court must look to its purpose and its anticompetitive effect before judging it violative of the antitrust laws, see, e.g., Chicago Board of Trade v. United States, 246 U.S. 231 (1918), rather than confining itself solely to a consideration of whether it was necessary to effectuate the policies of the Exchange Act.

In evaluating whether the rule of Silver applies, it is essential to focus first on the Constitution and Rules of the Exchange. As described above, its Constitution in Article XV, §1, forbids the sharing of any commission levied by the firms upon securities transactions with any employee, as commission, salary or bonus, except in accordance with the Constitution or the Rules of the Board of Governors. Article XV, §9, contains a similar provision with respect to service charges. At the time that the service charge was imposed, the Rules of the Board of Governors provided that the registered representatives could be compensated on a

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commission or salary basis or by bonus, but did not directly provide for sharing of the service charge revenue. Yet the Board of Governors possessed full authority to amend Rule 347(a) to allow passing along a percentage of the service charge. Conversely, had the charge to obtain additional revenue been imposed by Constitutional amendment, the Board of Governors was fully authorized to forbid, by rule, its inclusion in the basis upon which the commissions of registered representatives were calculated. The evidence introduced at trial showed that the reason for enacting the service charge by way of rule rather than constitutional amendment was the undisputed immediacy of the need for added revenues. Under these circumstances, this Court cannot accept plaintiffs' contention that, as the service charge was in effect a commission increase by another name, this technical irregularity in nomenclature means that the action was not taken in compliance with the requirements of the Exchange Act and therefore must be judged exclusively by the application of antitrust principles.

Therefore the analysis of Silver applies. The task of this Court is to reconcile the conflicting policies of the antitrust and securities laws, giving effect to antitrust principles except insofar as necessary to make the securities acts work.

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Plaintiffs next argue that for the Exchange, joined by the firms, to prohibit the direct passing along of a portion of the service charge revenues to the registered representatives constitutes collective employer action to regulate the wages of employees, a horizontal restraint analogous to price fixing, and as such, plaintiffs contend, a per se violation of the antitrust laws.

At trial plaintiffs did not contest the Exchange's authority pursuant to §6 and §19 of the Exchange Act, generally to make rules concerning the use of commissions charged by member firms to compensate registered representatives.. Nor did they then claim that the Exchange's usual exercise of this authority constitutes impermissible price fixing or offer any evidence which so suggested. Plaintiffs at trial simply challenged one particular instance of the Exchange's exercise of its rule making authority, as clearly restrictive of their compensation.¹ Yet, in their proposed conclusions of law, submitted after trial, plaintiffs did request this Court to find Article XV, §§ 1 and 9, and Rule 347(a), unlawful per se insofar as they restrict the compensation which the member firms may pay to their registered representatives.

1 One explanation offered for singling out this instance, that on this occasion the Exchange operated in violation of its own Constitution, as discussed above, is unpersuasive.

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We will consider their arguments first in reference to these provisions as they affected the service charge, and then evaluate them generally.

In support of their claim, plaintiffs argue first that all horizontal agreements in restraint of trade are illegal per se; second, that in particular, collective employer action to regulate wages is equivalent to price fixing and a fortiori illegal per se; and third, that under the cases even indirect or partial price fixing is governed by this per se rule.

Plaintiffs cite United States v. Topco Associates, Inc., 405 U.S. 596 (1972), for the general proposition that all horizontal agreements in restraint of trade are illegal per se under the antitrust laws. That case, however, dealt specifically with horizontal agreements to divide territory, and held, for the first time, that all horizontal territorial restrictions violate the antitrust laws without proof of purpose or effect. It based this conclusion on a line of cases all dealing with such territorial restrictions. The case cannot be extended to mandate barring all horizontal agreements of whatever kind or however minimal anti-competitive impact. Indeed, the rule of reason has often been held applicable to horizontal agreements. See, e.g., Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911); United States v. American Tobacco Co., 221 U.S. 106

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(1911); Chicago Board of Trade, supra.

In direct support of the analogy between defendants' action here and price fixing, plaintiffs have cited only Judge Mansfield's decision denying a motion to dismiss an earlier complaint in this case (Cordova v. Bache & Co., 321 F. Supp. 600 (S.D.N.Y. 1970)), and research fails to disclose another. In principle this Court agrees that collective employer action to regulate employee compensation, outside the context of a collective bargaining situation, would constitute price fixing. But it does not follow, as plaintiffs argue, that the Exchange's regulation of the single element of compensation at issue here, in the context surrounding the imposition of the service charge, was a scheme to fix or stabilize prices.

Plaintiffs reason from cases dealing with price fixing, and maintain that fixing any one element of a price is always illegal. In fact, the rule is not quite so simple. When the purpose of an agreement is to fix or stabilize prices, even if the means used affects only one element of the price structure, or only indirectly affects prices, the agreement is illegal per se, without regard to the power of the conspirators in fact to fix prices, or the anticompetitive effects of the scheme, or its economic justification. Thus, distribution systems with the purpose of controlling resale price are illegal, as are fixing maximum or minimum prices,

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or attempting to build a floor under prices by systematic spot purchases. See, e.g., United States v. Socony-Vacuum Oil Co., Inc., 310 U.S. 150 (1940); United States v. Bausch & Lomb Optical Co., 321 U.S. 707 (1944); Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211 (1951).

But where an arrangement is not on its face a price fixing scheme in purpose, the courts do not apply a per se prohibition, looking instead to whether those making the arrangement possess the power or intent to fix prices, and whether prices are actually stabilized to determine whether the behavior in fact amounts to price fixing. Report of the Attorney General's National Committee to Study the Antitrust Laws, 1955, p. 14. Arrangements to exchange marketing information fall into this category, as did a restriction on the period of price making in one segment of trading in one commodity in Chicago Board of Trade. See, e.g., American Column & Lumber Co. v. United States, 257 U.S. 377 (1921); United States v. American Linseed Oil Co., 262 U.S. 371 (1923); Maple Flooring Mfrs. Ass'n. v. United States, 268 U.S. 563 (1925); Cement Mfrs. Protective Ass'n. v. United States, 268 U.S. 588 (1925); Chicago Board of Trade, supra. If after such examination the court determines that the arrangement is price fixing it is illegal per se, e.g., American Column & Lumber Co., supra, if it is not, the traditional rule of reason applies, and the conduct is illegal only if anticompetitive in purpose or effect. E.g.,

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Maple Flooring Mfrs. Ass'n., supra; Chicago Board of Trade,
supra.

The action plaintiffs contest in this case resembles the latter type of arrangement. While the rule making power of the Board of Governors may give the Exchange and its members the power to stabilize the compensation of registered representatives, this was clearly not the expressed purpose of the service charge. And the rule prohibiting sharing the service charge with registered representatives was designed primarily to enable member firms to retain needed revenue, furthering the purpose which prompted imposition of the service charge, rather than to achieve any uniformity or reduction in the compensation of registered representatives. The effect of the requirement may have been in part that the registered representatives received, in general, less money than they would have absent the prohibition, although this has not been conclusively demonstrated. There was no stabilizing effect on wages, however, and no greater degree of uniformity in the compensation of registered representatives after the service charge was imposed than before. Competition continued unabated, and in at least one case a firm's increased revenue was reflected in an increase in the registered representatives' commission rate. Under

2 The complaint against that firm, Shearson, Hamill & Co., Inc., was dismissed during the trial.

these circumstances, this Court does not consider this an arrangement for the purpose of fixing prices. The traditional rule of reason therefore applies. Nor, applying this rule, does this Court find the Exchange's action anticompetitive in purpose or effect.

The same reasoning applies with still more force to the Exchange's general regulation of registered representatives' compensation, through the guidelines set forth in Article XV, §§ 1 and 9, of its Constitution and Rule 347(a). As plaintiffs' own exhibits reveal, the Exchange does not attempt to regulate the exact compensation of the registered representatives in any way, but within very broad guidelines set forth in its Constitution and Rules, allows the firms to establish their own systems of compensation as well as their rates. These broad guidelines have not been used, and it is difficult to imagine how, in their present form, they might be used, to achieve conformity in wages or to reduce competition for the services of registered representatives. This Court does not find either the guidelines or their usual application to constitute an arrangement to fix prices or affect competition.

As noted above, the decisions in Silver and Thill, supra, require that antitrust liability of the Exchange and

its member firms for actions taken pursuant to the Exchange Act, be judged only after appropriate consideration of the policies of the securities laws. See also Chief Justice Warren's dissent from the denial of certiorari in Kaplan v. Lehman Bros., 389 U.S. 954 (1967). The securities laws are designed to regulate and to some extent stabilize the securities market to ensure protection of investors and fair dealing in securities. First among the Exchange Act's enumeration of matters concerning which the Commission may properly review, alter and supplement the Exchange rules is "(1) safeguards in respect of the financial responsibility of members. . . ." 15 U.S.C. §78s(b).

In this case, the service charge was approved after actual Commission scrutiny. The Commission judged it necessary for the protection of investors that immediate interim measures be taken to supply additional revenue to rapidly failing brokerage firms. In this sense, the service charge itself was necessary to make the securities laws work. Moreover, to insure that the additional charge to investors was in fact used to further the end for which it was enacted, the Commission formally required that the revenue so generated be retained by the firms effecting the transactions and be used prudently to achieve financial stability. While the Commission did not formally require that the service charge be excluded from the formulae for compensating registered repre-

sentatives, and indeed, when the latter objected to the exclusion informed them that this was a matter in which it would not intervene, it is entirely consistent with the purpose for which the charge was levied, that it be so excluded. The revenue was thereby retained at the level judged most crucial, and individual firms remained free to decide for themselves whether to increase the salaries of their employees. In fact, the evidence at trial showed that the revenue generated by the service charge was insufficient to keep the firms from operating at a loss, but at best, merely stemmed the continued erosion of capital and relieved the most acute financial pressure on some of the firms. Thus, the limitations the Exchange imposed themselves furthered the purposes of the securities laws.

In summary, defendants' action in imposing the service charge and prohibiting its direct use in calculating the compensation due registered representatives was not a price fixing scheme or any other per se violation of the antitrust laws. Applying the standards of the rule of reason, the Court finds that defendants' action was not taken with any anticompetitive purpose, nor did it have the effect of restricting competition for the services of registered representatives. Moreover, to restrict passing along the revenues directly was consistent with the purpose for which the service charge was effected, namely, to provide essential

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immediate assistance to rapidly failing brokerage firms. This purpose is well within the recognized aim of the securities laws, protection of investors and smooth and fair administration of the securities markets. Therefore, in the judgment of this Court, defendants have committed no violation of the antitrust laws as charged by plaintiffs.

Plaintiffs also alleged violations of §340 of the New York General Business Law and of the common law of the states in which the Exchange and member firms do business. However, plaintiffs offered no proof at trial on these claims and appear to have abandoned them.

Accordingly, the plaintiffs' second amended complaint is dismissed. The foregoing constitutes the findings of fact and conclusions of law of the Court for the purposes of Rule 52, Fed. R. Civ. P.

Settle judgment on notice.

Dated: June 3, 1974

Robert A. Wands

U. S. D. J.

FILED
JULY 10 1968
FBI - WASH. D. C.

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

438A

L. JOHN JACOBI, etc.,

70 Civ. 3152 (R.J.W.)

Plaintiffs,

JUDGMENT

-against-

BACHE & CO., et al.,

Defendants.



The within action having been tried on March 4, 5 and 6, 1974, and counsel for the parties having thereafter submitted proposed Findings of Fact and Conclusions of Law, and due deliberation having been had thereon, and this Court having filed its opinion dated June 3, 1974 finding in favor of the defendants and against the plaintiffs, such opinion constituting the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, it is

ORDERED, ADJUDGED and DECREED that judgment be entered in favor of the defendants and against the plaintiffs, and it is further

ORDERED, ADJUDGED and DECREED that the plaintiffs Second Amended Complaint be and the same hereby is dismissed.

Dated: New York, New York

June 24th, 1974

Robert J. Ward
Robert J. Ward
United States District Judge

JUDGMENT ENTERED - 6/25/74

Hufnagel & Berghardt

Affidavit of personal service

74-2001

In The

United States Court of Appeals

For the Second Circuit

L. JOHN JACOBI and ROBERT GAMBERA, individually, on behalf of the members of the AMERICAN ASSOCIATION OF SECURITIES REPRESENTATIVES, and on behalf of all other securities representatives similarly situated.

Plaintiffs-Appellants

v.

BACHE & CO., INC.; WALSTON & CO., INC.; THOMSON & MCKINNON AUTHINGLOSS, INC. formerly THOMSON & MCKINNON, INC.; HORNBLOWER WEEKS, HEMPHILL, NOYES, LOEB, PHAOIDES & COMPANY; FLECKER, ANTHONY & RILEY DAY; HARRIS, UPHAM & CO., INC.; DOMINICK INTELL CORP.; HALFF & NIEGELZ, INC.; GOODBODY & CO., INC.; BEAR, STEARNS & CO.; LEHMAN BROS. EDDIE PEABODY & CO., INC.; P.W. PRESSPRICH & CO., INC.; DEAN WITTER & CO., INC.; W.L. HUTTON, REYNOLDS & CO.; PAINE WEBBER; JACKSON & CERUTI; SCHEINMAN, HOCKSTEIN & TROTTA, INC.; PRESSMAN, FROLICH & FROST, INC.; NEWBURGER, LOEB & CO.; RAUSCHER, PIERCE SECURITIES CORP.; OPPENHEIMER & CO.; STEINER ROUSE & CO., INC.; L.J. ROTHSCHILD & CO.; SPENCER TRASK & CO.; SMITH BARNEY & CO., INC. and THE NEW YORK STOCK EXCHANGE, INC.

Defendants-Respondents

STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

I, Victor Ortega,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York
That on the 26th day of Sept 1974 at (see attached)

deponent served the annexed affiant affidavit
(see attached)

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s)

Victor Ortega
Print name beneath signature

VICTOR ORTEGA

Sworn to before me, this 27th
day of Sept 19 74

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418250
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

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